FILED
06-568 OCT 23 2006
OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

SALEEM CRAWLEY,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of New Jersey

PETITION FOR WRIT OF CERTIORARI

FRUQAN MOUZON ESQ.
Counsel of Record

GIBBONS, DEL DEO, DOLAN,
GRIFFINGER & VECCHIONE
A PROFESSIONAL CORPORATION
One Riverfront Plaza
Newark, New Jersey 07102
(973) 596-4500

Attorney for Petitioner
Saleem Crawley

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

Whether a New Jersey statute survives constitutional scrutiny when it makes criminal an individual's decision to flee police officers approaching with less than the reasonable articulable suspicion necessary to justify a *Terry* stop.

PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding in the court whose judgment is sought to be reviewed are as follows:

1. Saleem Crawley
2. State of New Jersey

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING BELOW	ii
TABLE OF AUTHORITIES	v
CITATIONS OF OPINIONS AND ORDERS	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
RELEVANT FACTUAL AND PROCEDURAL BACKGROUND	4
REASONS FOR GRANTING THE PETITION	8
A. Important Issue	8
B. Split of Authority	8
C. An Opportunity to Further Define, Refine and Explain *Hiibel v. Sixth Judicial District of Nevada*	10
ARGUMENT	11
THE STATE OF NEW JERSEY CANNOT CONSTITUTIONALLY CRIMINALIZE AN INDIVIDUAL'S FLIGHT FROM A LAW ENFORCEMENT OFFICER WHO HAS APPROACHED THE INDIVIDUAL WITHOUT A REASONABLE ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY	11
CONCLUSION	22

TABLE OF CONTENTS – Continued

Page

APPENDIX

State v. Crawley, 187 N.J. 440, 901 A. 2d 924 (2006)....App. 1

State v. Crawley, App. Div. Opinion.....App. 34

State v. Crawley, Law Div. Opinion.....App. 48

TABLE OF AUTHORITIES

Page

CASES

Breedlove v. State, 605 So. 2d 589 (Fla. 4th Dist. App. 1992) 9, 19

Brown v. Texas, 443 U.S. 47 (1979) 3, 16, 17

Carroll v. United States, 267 U.S. 132 (1925) 11

Coates v. Cincinnati, 402 U.S. 611 (1971) 17

Cook v. State, 1 S.W.3d 718 (Tex. App. – El Paso 1999) 9, 20

Corbin v. State of Indiana, 568 N.E.2d 1064 (Ind. Ct. of Appeals, 2d Dist. 1991) 20

D.G. v. State of Florida, 831 So. 2d 256 (Fla. 3d DCA 2002) 19

D.M. v. State of Florida, 681 So. 2d 797 (Fla. 2d DCA 1996) 20

D.T.B. v. State of Florida, 892 So. 2d 522 (Fla. 3d DCA 2004) 19

Dunaway v. New York, 442 U.S. 200 (1979) 8, 12

Flippo v. West Virginia, 528 U.S. 11 (1999) 11

Florida v. Royer, 460 U.S. 491 (1983) ..... *passim*

Hiibel v. Sixth Judicial District of Nevada, 542 U.S. 177 (2004) 10, 13, 15, 16, 17

Katz v. United States, 389 U.S. 347 (1967) 11

TABLE OF AUTHORITIES – Continued

Page

Maryland v. Pringle, 540 U.S. 366 (2003) 11

Melson v. Municipality of Anchorage, 60 P.3d 199 (Alaska Ct. App. 2002) 20

Miranda v. Arizona, 384 U.S. 436 (1966) 15

Nelson v. State of Florida, 543 So. 2d 1308 (Fla. 2d DCA 1989) 20

Olmstead v. United States, 277 U.S. 438 (1928) 3

People v. Moore, 286 Ill. App. 3d 679, 676 N.E.2d 700 (1997) 9, 18

People v. Tillman, 184 Misc.2d 20 (N.Y. Misc. 2000) 9, 20

State of Nebraska v. Richter, 415 N.W.2d 476, 226 Neb. 874 (1987) 21

State of North Carolina v. Swift, 414 S.E.2d 65, 105 N.C. App. 550 (1992) 20

State v. Gox, 532 N.W.2d 384 (N.D. 1995) 9

State v. Crawley, 187 N.J. 440 (2006) 1

State v. Crawley, 884 A. 2d 1266, 185 N.J. 297 (2005) 6

State v. Hawkins, 422 So. 2d 1155 (La. 1982) 9

State v. Holbrooks, 983 S.W.2d 697 (Tenn. Crim. App. 1998) 9

State v. Maryland, 771 A.2d 1220, 167 N.J. 471 (2001) 7, 14

Terry v. Ohio, 392 U.S. 1 (1968) ..... *passim*

United States v. Cortez, 449 U.S. 411 (1981) 12

Ybarra v. Illinois, 444 U.S. 85 (1979) 11

TABLE OF AUTHORITIES – Continued

Page

STATUTES

18 Pa. C.S. § 5104 9

28 U.S.C. § 1257(a) 2

Arizona Revised Statutes § 13-2402 9

Arkansas Code Annotated §§ 5-54-102; 5-54-104 9

California Penal Code § 148.10 9

Colorado Revised Statutes Annotated § 18-8-104 9

Florida Statutes Annotated § 843.02 ..... 9, 19

Georgia Code Annotated § 16-10-24 9

Hawaii Revised Statutes § 710-1010 9

Indiana Code § 35-44-3-3 9

Iowa Code Annotated § 719.1 9

Kentucky Revised Statutes §§ 520.095, 520.100 9

Louisiana Statutes Annotated § 14:108 9

Michigan Compiled Laws Annotated § 750.479 9

Minnesota Statutes Annotated § 609.05 9

Montana Code Annotated § 45-7-302 9

N.J.S.A. 2C: 29-1 ..... *passim*

N.J.S.A. 2C: 29-1 (a) 2

N.J.S.A. 2C: 33-2.1 5

N.J.S.A. 2C: 35-10c 5

N.J.S.A. 2C: 36-2 5

Nebraska Revised Statutes § 28-906 9

New Mexico Statutes Annotated § 30-22-1B 9

TABLE OF AUTHORITIES – Continued

Page

North Carolina General Statutes § 14-223 9

North Dakota Statutes § 12.1-08-02 9

NY CLS Penal § 195.05 9

Oklahoma Statutes Annotated title 21 § 540 9

Rhode Island General Laws § 11-32-1 9

South Dakota Codified Laws § 22-11-6 9

Tennessee Code Annotated § 39-16-603 9

Texas Penal Code § 38.03 9

Vermont Statute Annotated tit. 13 § 3001 9

Vernon's Annotated Missouri Statutes § 575.150 9

Virginia Code Annotated § 18.2-2-460 9

Washington Revised Code § 9A.76.020 9

Wisconsin Statute § 946.41 9

OTHER AUTHORITIES

2 W.LaFave, Search and Seizure § 3.6(e), at 356-57 (4th ed. 2004) 21

720 ILCS 5 § 31-1(a) 18

PETITION FOR WRIT OF CERTIORARI

Saleem Crawley respectfully petitions for a writ of certiorari to review the divided opinion of the Supreme Court of the State of New Jersey entered on July 24, 2006. The decision affirmed Mr. Crawley's conviction for Obstruction of the Administration of Law based upon his refusal to stop when ordered by officers acting upon less than the reasonable articulable suspicion of criminal activity required by *Terry v. Ohio*, 392 U.S. 1 (1968).

Mr. Crawley previously filed and was granted a petition for a writ of certification in the Supreme Court of the State of New Jersey seeking to establish as unconstitutional *N.J.S.A.* 2C: 29-1 to the extent that it criminalizes a person's flight from a police encounter based on less than reasonable suspicion. Even though aware of direct precedent from this Court explaining that an individual is free to walk away in such circumstances, the New Jersey Supreme Court nonetheless ruled that the act of so doing can be made a punishable offense.

CITATIONS OF OPINIONS AND ORDERS

The opinion of the New Jersey Supreme Court (App. 1-33) is reported at *State v. Crawley*, 187 N.J. 440, 901 A. 2d 924 (2006). The New Jersey Appellate Division's opinion (App. 33-47) and the New Jersey Law Division's opinion (App. 48-54) are not reported.

JURISDICTION

The opinion of the New Jersey Supreme Court affirming Mr. Crawley's conviction was entered on July 24, 2006. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, clause 2 of the United States Constitution provides, in pertinent part: "The Constitution, and the Laws of the United States which shall be made in pursuance thereof . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby,. . . . "

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ."

N.J.S.A. 2C: 29-1 (a) makes it unlawful if an individual:

> Purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act. This

section does not apply to failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental function.

STATEMENT OF THE CASE

Justice Brandeis famously observed that the Fourth Amendment embodies an individual's "right to be let alone," an entitlement constituting the "most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting). The Supreme Court has long recognized that the Fourth Amendment protects an individual's "inestimable right of personal security" and that "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person." *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968). This right to control one's own person and to be let alone includes the right to stand, walk, jog or run on a city street. A police officer may interfere and detain the individual only if the officer has "specific and articulable facts" based upon an objective observation that the person stopped has been or is about to engage in criminal wrongdoing. *Terry*, 392 U.S. at 21. "Simple good faith on the part of the arresting officer is not enough." *Id.* at 22.

Because a reasonable suspicion of criminal activity is necessary to justify detaining someone on a public street, this Court has recognized that an individual's failure to comply with the request of an Officer acting upon less than reasonable suspicion cannot be criminalized. *Brown*

v. Texas, 443 U.S. 47, 52 (1979). In fact, the Court has explained that when an officer armed with less than reasonable suspicion seeks to ask questions, the individual has the right to "decline to listen to the questions at all and may go on his way." *Florida v. Royer*, 460 U.S. 491, 497-98 (1983). Mr. Crawley did just that, and, for exercising that right, he was charged and convicted of a criminal offense. Because the state of New Jersey – and many other states – wrongly criminalize the exercise of a recognized right, Certiorari should be granted and ultimately Mr. Crawley's conviction reversed.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

1. Police officers Paul Willian and Matt Milton received a radio dispatch on March 15, 2002 at 12:10 A.M. reporting a complaint that a man suspected of carrying a weapon was lurking around a Bar in a rough part of Newark, New Jersey. The man was described as a young black male, 5'5" to 5'7", 150 lbs. and wearing a green jacket, red shirt, blue jeans, and black boots.[1]

2. The Officers responded by heading toward the Bar. The Officers testified that as they approached, a man matching the description (later determined to be Defendant Saleem Crawley) was seen walking at a semi-brisk pace. The officers approached Mr. Crawley from the rear, rolled down the window of the police cruiser and Officer Williams said "Police. Stop. I need to speak with you."

[1] There was no testimony at trial regarding the source or reliability of the information provided in the radio dispatch.

(App. at 3). Mr. Crawley immediately started running and Officer Williams gave chase.

3. Officer Williams testified that approximately 70 feet into the chase, Mr. Crawley threw a clear plastic bag on the ground. According to Officer Williams, twelve (12) very small Ziplock baggies containing a white powdered substance were inside the bag. The Officer testified that he then picked up the bag and resumed his foot-pursuit, which ended a short time later with Mr. Crawley's apprehension.

4. Mr. Crawley was then transported to the West Precinct police station along with the bag allegedly found at the scene.[2] Before turning the property over to evidence, Officer Williams testified that the substance found in the bag was "field tested" and that the white powdery substance tested positive for cocaine.

5. Mr. Crawley was arrested and charged with drug possession (*N.J.S.A.* 2C: 35-10c); possession of drug paraphernalia (*N.J.S.A.* 2C: 36-2); loitering or wandering with intent to buy or sell drugs (*N.J.S.A.* 2C: 33-2.1); and obstruction of the administration of law (*N.J.S.A.* 2C: 29-1).

6. Mr. Crawley was offered a conditional discharge. He refused, choosing to proceed to trial. The trial took place on March 12, 2003 in Essex County. The State was unable to sustain its burden of proof as to the drug charges because the twelve (12) small baggies allegedly

[2] It is worth noting that although Mr. Crawley was initially approached because he was suspected of carrying a weapon, no weapon was ever found.

containing the "white powdered substance" had mysteriously disappeared. As a result, Mr. Crawley was acquitted of all three drug offenses. He was, however, convicted of obstruction of the administration of law (*N.J.S.A.* 2C: 29-1) because of his decision to flee when Officer Williams asked him to stop and answer questions.

7. Mr. Crawley appealed the municipal court ruling and on March 17, 2004, the Law Division, speaking through Judge John C. Kennedy affirmed the obstruction conviction. Judge Kennedy did not perform a *Terry* analysis, ruling that "this decision does not require the Court to determine whether the police actions met the standards for a constitutionally permissible investigatory stop."

8. The case was further appealed to New Jersey State Court's Appellate Division. The Appellate Division disagreed with Judge Kennedy, holding that a reasonable suspicion of criminal activity must precede the initial stop or a conviction for flight would be improper. Nonetheless, the conviction was upheld, as the Appellate Division Judges concluded that the Officers had a reasonable suspicion for a valid investigatory stop based on the description and Mr. Crawley's location in a high crime area.

9. Mr. Crawley then sought certification to the State Supreme Court, which was granted on October 12, 2005. *See State v. Crawley*, 185 N.J. 297, 884 A. 2d 1266 (2005).

10. Oral argument was held on February 15, 2006 and five months later, the New Jersey Supreme Court rendered a 5-2 decision also affirming Mr. Crawley's conviction.

11. While five of the New Jersey Supreme Court Justices voted to affirm the Appellate Division's ultimate conclusion that Mr. Crawley's conviction should be affirmed, they disagreed with the Appellate Division's essential conclusion that absent a reasonable suspicion to justify the initial intrusion, an individual cannot be convicted for refusing to answer police questions and leaving the scene.

12. The majority concluded that an obstruction conviction is proper, with or without adequate justification for the police intrusion, so long as the police were acting with "good faith."

13. Two Justices dissented, agreeing with the Appellate Division's conclusion that if the officers lacked justification to stop Mr. Crawley he "would have been free to leave the area and his failure to heed the officer's request to stop and speak with the officers could not have been criminalized." App. at 25.

14. In reaching this conclusion, the dissenting Justices found that this Court's decisions in *Terry v. Ohio*, 392 U.S. 1 (1968) and *Florida v. Royer*, 460 U.S. 491, 497-98 (1983), along with the New Jersey Supreme Court's decision in *State v. Maryland*, 167 N.J. 471, 483, 771 A. 2d 1220, 1227 (2001), establish a citizen's right to leave amidst questions from a police officer that does not have a reasonable and articulable suspicion of criminal activity. Given a citizen's right to respond to questioning by leaving the scene, the dissenting Justices concluded that criminalizing the exercise of that right is improper.

REASONS FOR GRANTING THE PETITION

A. Important Issue

In the landmark case of *Terry v. Ohio*, 392 U.S. 1 (1968) this court explained that a police officer may forcibly detain an individual on a public street when the officer is armed with "specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity." *Id.* at 8-9. The officer may also approach an individual with less than a reasonable suspicion and ask "if [he or she] is willing to answer some questions." *Dunaway v. New York*, 442 U.S. 200, 210 n.12 (1979). This "less than reasonable suspicion" encounter, however, must be voluntary. *See Florida v. Royer*, 460 U.S. 491, 497-98 (1983) (explaining that when approached by an officer simply seeking to ask questions the individual "may decline to listen to the questions at all and may go on his way").

The question to now be considered is whether State Legislatures are free to ignore the language in *Royer* – as was informed by *Terry* – and criminalize conduct authorized by this Court. The State of New Jersey, along with several other States, have made it illegal for an individual to flee from such an inquiry even though this Court has clearly stated that in such a situation the person may go on his way. This Court should review the constitutionality of criminalizing an established right and grant Certiorari.

B. Split of Authority

Whether it is constitutional to criminalize flight from an invalid *Terry* stop is a matter that has divided the courts. More than thirty (30) states have statutes that criminalize an individual's interference with police officers

in performance of their official duties.[3] Some of those statutes facially recognize a citizen's right to avoid police questioning when the officers lack a reasonable suspicion of criminal activity. For that reason states such as Arizona and Arkansas are worded such that flight cannot form a possible means of obstructing justice.[4] Of those State's that do not expressly exempt flight, some have ruled through case law that the simple act of fleeing an unconstitutional police stop cannot form a valid basis for conviction.[5] Other states, however, agree with the New Jersey Supreme Court and hold that flight alone may form the basis of a valid obstruction conviction, even if the original stop was

---

[3] Arizona Revised Statutes § 13-2402; Arkansas Code Annotated §§ 5-54-102; 5-54-104; California Penal Code § 148.10; Colorado Revised Statutes Annotated § 18-8-104; Florida Statutes Annotated § 843.02; Georgia Code Annotated § 16-10-24; Hawaii Revised Statutes § 710-1010; Indiana Code § 35-44-3-3; Iowa Code Annotated § 719.1; Kentucky Revised Statutes §§ 520.095, 520.100; Louisiana Statutes Annotated § 14:108; Michigan Compiled Laws Annotated § 750.479; Minnesota Statutes Annotated § 609.05; Vernon's Annotated Missouri Statutes § 575.150; Montana Code Annotated § 45-7-302; Nebraska Revised Statutes § 28-906; New Mexico Statutes Annotated § 30-22-1B; NY CLS Penal § 195.05; North Carolina General Statutes § 14-223; North Dakota Statutes § 12.1-08-02; Oklahoma Statutes Annotated title 21 § 540; 18 Pa. C.S. § 5104; Rhode Island General Laws § 11-32-1; South Dakota Codified Laws § 22-11-6; Tennessee Code Annotated § 39-16-603; Texas Penal Code § 38.03; Vermont Statute Annotated tit. 13 § 3001; Virginia Code Annotated § 18.2-2-460; Washington Revised Code § 9A.76.020; Wisconsin Statute § 946.41.

[4] Arizona Revised Statutes § 13-2402; Arkansas Code Annotated §§ 5-54-102, 5-54-104. As an interesting note prior to 2000, New Jersey was one of the states that expressly exempted flight.

[5] *See, e.g., People v. Tillman*, 184 N.Y. Misc. 2d 20, 706 N.Y.S.2d 819 (2000); *Cook v. State*, 1 S.W.3d 718 (Tex. App. – El Paso 1999); *State v. Holbrooks*, 983 S.W.2d 697 (Tenn. Crim. App. 1998); *People v. Moore*, 676 N.E.2d 700, 286 Ill. App. 3d 679 (1997); *State v. Cox*, 532 N.W.2d 384 (N.D. 1995); *Breedlove v. State*, 605 So. 2d 589 (Fla. 4th Dist. App. 1992); *State v. Hawkins*, 422 So. 2d 1155 (La. 1982).

unconstitutional. This deep division among the courts, on an issue that so fundamentally implicates the constitutionality of a common statute, requires that a writ of certiorari issue.

C. An Opportunity to Further Refine and Explain *Hiibel v. Sixth Judicial District of Nevada*

This case also implicates the vitality of this Court's precedents. In *Hiibel v. Sixth Judicial District of Nevada*, 542 U.S. 177 (2004) this Court reviewed the constitutionality of a Nevada statute that made it a criminal act to refuse to comply with a police officer's request for identification. That statute – unlike the offending statute at issue here – paid homage to *Terry* and its progeny by requiring that the initial police encounter be "under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime." *Hiibel*, 542 U.S. at 181.

While this Court upheld the constitutionality of that statute, the statute at issue in this case is bereft of language requiring a reasonable suspicion for the initial encounter. The New Jersey Supreme Court here ruled that the absence of this language is not important to constitutionality and further should not be read into the statute by the Courts. For this additional reason, this Court should grant certiorari to, for the first time, decide whether the language in the Nevada statute requiring that the initial stop be "under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime" is or is not essential for a finding that the statute is constitutional.

ARGUMENT

THE STATE OF NEW JERSEY CANNOT CONSTITUTIONALLY CRIMINALIZE AN INDIVIDUAL'S FLIGHT FROM A LAW ENFORCEMENT OFFICER WHO HAS APPROACHED WITHOUT A REASONABLE ARTICULABLE SUSPICION OF CRIMINAL ACTIVITY

1. Warantless searches or seizures are presumptively invalid under the Fourth Amendment. *See Flippo v. West Virginia*, 528 U.S. 11, 13 (1999). Generally, the Fourth Amendment requires the approval of an impartial judicial officer based on probable cause before most searches or seizures can be undertaken. *Katz v. United States*, 389 U.S. 347 (1967).

2. There are three constitutionally permissible forms of warrantless police encounters. First is the encounter justified by probable cause, which exists where the facts and circumstances within the officer's knowledge, based upon reasonably trustworthy information, are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed. "The substance of all the definitions of probable cause is a reasonable ground for belief of guilt," *Maryland v. Pringle*, 540 U.S. 366, 371 (2003), and that belief of guilt must be particularized with respect to the person to be searched or seized. *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). In essence, probable cause is more than a mere suspicion but less than proof beyond a reasonable doubt. *Carroll v. United States*, 267 U.S. 132 (1925).

3. Second is the investigatory *"Terry"* stop, which must be based on "specific and articulable facts which,

taken together with rational inferences from those facts," give rise to a reasonable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). In *Terry*, this Court established that law enforcement officers may stop a person on a public street, without that person's consent, in the absence of probable cause for arrest. *Id.* The stop, however, must be justified by a reasonable belief, based upon objective and particularized facts, that the person stopped was or is involved in criminal activity. *United States v. Cortez*, 449 U.S. 411 (1981).

4. The third and least intrusive encounter (in some jurisdictions called a "field inquiry") allows a law enforcement officer to approach someone and ask questions of the individual – *if* the individual is willing to listen. *Dunaway v. New York*, 442 U.S. 200, 210, n.12 (1979). The individual's acquiescence to the police intrusion, however, is purely voluntary. He or she "need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way." *Florida v. Royer*, 460 U.S. 491, 498 (1983). An individual approached in this manner cannot be even momentarily detained without the Officers having objectively reasonable grounds for doing so, and his refusal to answer or listen does not in and of itself furnish those grounds. *Id. See also Terry*, 392 U.S. at 32-33 (Harlan, J., concurring) ("ordinarily the person addressed has an equal right to ignore his interrogator and walk away"); *id.* at 34 (White, J., concurring) ("there is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way").

5. By recognizing the differing levels of belief held by Officers that an individual is steeped in criminal activity, i.e. probable cause to make an arrest, reasonable suspicion to momentarily detain, or no suspicion, which can justify a "field inquiry," this Court has distinguished between the appropriate responses allowed by the individual approached.

6. If the Officer approaches in circumstances sufficient to satisfy *Terry*'s reasonable suspicion standard, the individual has an obligation to submit to the police requests. *Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, et al.*, 542 U.S. 177 (2004). By implication, the same must also be true if the circumstances meet the higher standard of "probable cause."

7. When there is less than a reasonable suspicion, however, this Court has explained that the approached individual has no obligation to stay and be interrogated. Justice White taught the following: if an individual is questioned by a police officer who lacks objectively reasonable and articulable grounds for the stop, the individual "may decline to listen to the questions at all and may go on his way." *Florida v. Royer*, 460 U.S. 491, 497-98 (1983). *See also Terry*, 392 U.S. at 32-33 (Harlan, J., concurring; *id.* at 34 (White, J., concurring).

8. Despite the clarity of this statement and its impressive pedigree, the New Jersey Supreme Court has put its *imprimatur* on a state statute that makes it illegal for an individual to do exactly what Justice White said he has a right to do – leave the area when a police officer, without reasonable, objective grounds for an investigatory stop, attempts to detain him for questioning.

9. In pertinent part, *N.J.S.A.* 2C: 29-1 provides that it is unlawful if an individual "purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight . . . "

10. The question before the New Jersey Supreme Court – and now presented to this Court – is whether an individual can be convicted of failing to stop for Police Officers conducting a field inquiry in light of this Court's prior proclamation that an individual has the right to walk away.

11. Unjustifiably, the New Jersey Supreme Court ignored the central premise of Mr. Crawley's argument and in its majority opinion neglected to even mention the language in *Terry* and *Royer* that explain an individual's rights and obligations during such a police encounter.[6]

12. Rather than focusing its opinion on *Terry* and *Royer* and an individual's recognized right to walk away from Police Officers seeking to question him or her with less than a reasonable suspicion, the New Jersey Supreme Court focused on legislative intent and statutory construction.

---

[6] In its process of massaging precedents in the manner necessary to reach its desired ends, the New Jersey Supreme Court did not discriminate when choosing which Court's opinions to ignore. Not only did the New Jersey Supreme Court ignore the import of Justices White and Harlan's understanding of *Terry* as well as the language in *Florida v. Royer*, it ignored its own precedents as well. *See State v. Maryland*, 167 N.J. 471, 483 (2001) (recognizing citizens' right to walk away from police officers seeking to ask questions during a field inquiry).

13. These concepts are wholly irrelevant to the current issue as it matters not what the New Jersey Legislature was *trying* to do. The issue revolves around what the New Jersey Legislature is *allowed* to do without violating the Fourth Amendment. Once this Court established an individual's right to "go on his way," all state legislatures should be prohibited from making the exercise of that right a criminal offense.

14. If such a statute is allowed to survive constitutional scrutiny, many other rights would be in jeopardy. For example, this Court in *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) established the right of an individual being subjected to a custodial interrogation to remain silent or to ask for an attorney. Since this Court recognized those rights, the State of New Jersey could not then enact legislation that makes it a crime for an individual in police custody to refuse to answer questions or ask for an attorney. Any such legislation would and should be stricken as unconstitutional. Likewise, *N.J.S.A.* 2C: 29-1, which makes it a criminal offense to walk away from police when stopped for questioning, cannot survive.

15. This Court recently dealt with the issue of a state's attempt to criminalize citizen reaction to police intrusion in *Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, et al.*, 542 U.S. 177 (2004). The issue there was a Nevada statute that forced a citizen to provide identification to a requesting law enforcement officer. But, unlike New Jersey, Nevada was careful to adhere to constitutional mandates and made refusal to identify oneself a criminal offense *only if* the approaching officer had a reasonable suspicion sufficient to satisfy *Terry*. This Court's decision upholding that statute was predicated on a valid *Terry* stop. The question now before

the Court is whether the statute could survive constitutional muster if a conviction was based upon the defendant's nonviolent reaction to an invalid *Terry* stop.

16. *Brown v. Texas*, 443 U.S. 47, 52 (1979) provides the definitive answer to that question. That case, as did *Hiibel*, involved a "stop and identify" statute making it a crime for a person not to give his name and address to an officer "who had *lawfully* stopped him and requested the information." *Id.* at 49 (Emphasis added). But unlike *Hiibel*, the Texas statute at issue in *Brown* did not require that the initial stop be "under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime." Mr. Brown was convicted under this statute and, like Mr. Crawley, argued that it would be unconstitutional to convict him of failing to comply with the officer's demand because the officer did not have the reasonable suspicion necessary to accost him in the first place. In other words, just as Mr. Crawley, the defendant in *Brown* argued that police officers were not "lawfully" performing an official function if the stop was not based on a reasonable articulable suspicion.

17. This Court agreed with the defendant and invalidated his conviction. *Id.* at 53. In language probative of the present issue and particularly relevant to this case, the Court explained:

> in the absence of any basis for suspecting appellant of misconduct, the balance between the public interest and appellant's right to personal security and privacy tilts in favor of freedom from police interference. The Texas statute under which appellant was stopped and required to identify himself is designed to advance a weighty social objective in large metropolitan centers:

> prevention of crime. But even assuming that purpose is served to some degree by stopping and demanding identification from an individual without any specific basis for believing he is involved in criminal activity, the guarantees of the Fourth Amendment do not allow it. When such a stop is not based on objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits.

Id.

18. *N.J.S.A.* 2C: 29-1 makes it illegal to avoid the police even when the police have no constitutionally valid reason to conduct a *Terry* stop. *Hiibel* and *Brown* make clear that the statute cannot be applied unless the initial stop was premised upon a reasonable suspicion. In short, the State of New Jersey may not criminalize by statute conduct that this Court has repeatedly explained is proper. *Coates v. Cincinnati*, 402 U.S. 611, 616 (1971) (holding that the State may not make "a crime out of what under the Constitution cannot be a crime").

19. Two dissenting Justices along with the New Jersey Appellate Division agreed with this assessment, explaining that "if the officer's contact with defendant had been merely a field inquiry, then defendant would have been free to leave the area and his failure to heed the officer's request to stop and speak with the officers could not have been criminalized." App. at 43. *See also* App. at 28 (Wallace, J., dissenting) ("[i]n my view, if the stop was a lawful investigatory stop, then the obstruction statute

applies. If it was a field inquiry, then the statute does not apply to criminalize defendant's flight.")[7]

20. Several other courts interpreting similar statutes also agree with Mr. Crawley, concluding that the act of fleeing police officers who have approached without a reasonable suspicion cannot be criminalized.

21. The facts of *People v. Moore*, 286 Ill.App.3d 649, 676 N.E.2d 700 (1997) are very similar to those here. In *Moore*, Police officers, in an attempt to identify gang members, converged on a tavern known for criminal activity. The officers approached an individual to ask him some questions. The only evidence that the individual was involved in criminal activity was that he was seen exchanging money with someone in a van. The officers identified themselves and the defendant fled, ignoring all orders to stop. After he was caught the suspect was charged with violating Illinois' obstruction statute, which is very similar to the statute at issue here.[8]

---

[7] It is interesting to note that since the three Judges in the New Jersey Appellate Division and two of the Justices on the State Supreme Court agreed that an individual stopped on less than reasonable suspicion cannot be convicted of leaving the scene, of the ten New Jersey Appellate Judges studying the issue, five held one way and five held the other. Such a deep split by reasonable and capable minds interpreting the same statute gives further credence to the notion that this Court should be the final arbiter.

[8] The Illinois statute provides, in pertinent part:

> a person who knowingly resists or obstructs the performance by one known to the person to be a peace officer or correctional institution employee of any authorized act within his official capacity commits a Class A misdemeanor.

720 ILCS 5/31-1(a).

22. There could be little dispute about whether seeing an individual exchange money with someone inside a van amounts to a "reasonable articulable suspicion of criminal activity." But, like the State of New Jersey, Illinois argued that regardless of whether *Terry* standards were met, the defendant could nonetheless be convicted of obstruction because even an unlawful arrest is an "authorized act" for purposes of the obstruction statute. *Id.* at 704, 653. The court disagreed, holding instead that a defendant's flight following an unjustified police action cannot be the basis of a conviction for obstruction. *Id.* at 704, 655.

23. Florida's obstruction statute provides that:

> whoever shall resist, obstruct, or oppose any officer . . . member of the Parole Commission or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor . . .

F.S.A. § 843.02.

24. Florida courts analyzing this statute have consistently held that if the "officer had no grounds to stop [defendant], [he or she] cannot be resisting the officer by running away." *Breedlove v. State of Florida*, 605 So. 2d 589 (Fla. 4th Dist. App. 1992). *See also D.T.B. v. State of Florida*, 892 So. 2d 522 (Fla. 3d Dist. 2004) (holding that police must have well-founded suspicion of criminal activity to justify a conviction for obstruction based on defendant's flight from officers); *D.G. v. State of Florida*, 831 So. 2d

256, 257 (Fla. 3d Dist. 2002) ("[a]bsent reasonable suspicion of the commission of a crime, a person has an affirmative right to avoid police contact"); *D.M. v. State of Florida*, 681 So. 2d 797 (Fla. 2d Dist. 1996) (passenger of stopped car who fled from police not guilty of obstruction); *Nelson v. State of Florida*, 543 So. 2d 1308 (Fla. 2d Dist. 1989) (holding that defendant's flight when he saw a marked police cruiser did not amount to resisting an officer in the lawful execution of duties).

25. Texas, along with several other states, have reached similar conclusions. The Texas statute makes it illegal to "intentionally flee[ ] from a person he knows is a peace officer attempting lawfully to arrest or detain him." Texas Penal Code § 38.04. A Texas court analyzed that statute and concluded that the initial detention must satisfy *Terry* standards before a fleeing individual can be convicted of obstruction. *Cook v. State of Texas*, 1 S.W.3d 718 (Tex. App. – El Paso 1999). *See also People v. Tillman*, 184 N.Y. Misc. 2d 20, 706 N.Y.S.2d 819 (N.Y. Misc. 2000) ("running from a police officer is not a crime" under New York's obstructing government administration statute); *State of North Carolina v. Swift*, 414 S.E.2d 65, 105 N.C. App. 550 (1992) (a person's flight from an unlawful arrest cannot be considered as a circumstance to establish probable cause for an arrest).

26. By contrast, other courts have reached the opposite conclusion. *See Melson v. Municipality of Anchorage*, 60 P.3d 199, 201-02 (Alaska App. 2002) (noting that person has no right to flee from an unconstitutional investigative stop); *Corbin v. State of Indiana*, 568 N.E.2d 1064 (Ind. 2nd Dist. App. 1991) (flight following a police officer's order to stop can support a conviction for resisting law enforcement regardless of the lawfulness of the order);

State of Nebraska v. Richter, 415 N.W.2d 476, 226 Neb. 874 (1987) (finding that flight could form the basis for an obstruction conviction because the physical obstacle of running away obstructed, impaired, or hindered police officers' efforts to preserve the peace). Here, the majority of the New Jersey Supreme Court sided with the interpretations of courts in Alaska, Indiana, and Nebraska, while rejecting the understandings of courts in states such as Florida, Illinois, New York, North Carolina and Texas.

27. Because many states have some form of obstruction statute and courts interpreting those statutes are deeply conflicted when considering the statutes' juxtaposition to *Terry* and its progeny, certiorari should be granted to resolve the conflict.

28. Petitioner respectfully submits that the better reasoned cases hold that an obstruction conviction is improper when the initial stop does not satisfy *Terry* because if flight from an unconstitutional *Terry* stop is criminalized "'anyone who does not desire to talk to the police and who either walks or runs away from them would always be subject to legal arrest,' which can hardly be countenanced under the Fourth and Fourteenth Amendments." 2 W.LaFave, Search and Seizure § 3.6(e), at 356-57 (4th ed. 2004). Thus, this Court should ultimately reverse the decision of the New Jersey Supreme Court, and inform the legislatures in courts in the other states, by holding that an individual's flight from an invalid *Terry* stop cannot form the basis for a criminal conviction because this Court has previously established an individual's right to walk away in those instances.

CONCLUSION

As the law now stands in some jurisdictions, a person can be approached by police officers that have no reasonable belief that criminal activity is afoot, exercise his right recognized by this Court to leave the area, and, for that, be arrested, convicted and incarcerated. This issue goes to the very nature of the kind of society in which we wish to live: it is inimical to a free society that the exercise of one's rights can lead to imprisonment.

Based upon the foregoing, because there is a split of authority on the matter at hand and the petition raises an important constitutional issue, Saleem Crawley's Petition for Writ of Certiorari should be granted.

Respectfully submitted,

FRUQAN MOUZON ESQ.
Counsel of Record

GIBBONS, DEL DEO, DOLAN,
GRIFFINGER & VECCHIONE
A PROFESSIONAL CORPORATION
One Riverfront Plaza
Newark, New Jersey 07102
(973) 596-4500

Attorney for Petitioner
Saleem Crawley

Dated: October 23, 2006

901 A.2d 924

State v. CrawleyN.J.,2006.

Supreme Court of New Jersey.

STATE of New Jersey, Plaintiff-Respondent,

v.

Saleem T. CRAWLEY, Defendant-Appellant.

Argued Feb. 15, 2006.

Decided July 24, 2006.

Fruqan Mouzon, Newark, argued the cause for appellant (Gibbons, Del Deo, Dolan, Griffinger & Vecchione, attorneys).

Daniel I. Bornstein, Deputy Attorney General, argued the cause for respondent (Zulima V. Farber, Attorney General of New Jersey, attorney).

Gina Mendola Longarzo, Florham Park, submitted a brief on behalf of amicus curiae, Association of Criminal Defense Lawyers of New Jersey (Hack, Piro, O'Day, Merklinger, Wallace & McKenna, attorneys).

Justice ALBIN delivered the opinion of the Court.

In this case, two police officers on patrol received a dispatch from headquarters that a person was armed with a gun outside a bar. Minutes later, near the bar, the officers sighted a man matching the description given in the dispatch and ordered him to stop for questioning. Instead, the man, later identified as defendant Saleem T. Crawley, ran. After an intense pursuit, the officers arrested defendant. Defendant was convicted of the disorderly persons offense of obstructing "a public servant from lawfully performing an official function by means of flight." *N.J.S.A.* 2C:29-1(a). Defendant claims in this appeal that because the officers engaged in an unconstitutional investigatory stop, the officers were not "lawfully

performing an official function," and therefore he should have been found not guilty.

In upholding defendant's conviction, the Appellate Division determined that the investigatory stop was constitutional, finding that the officers acted based on "a reasonable articulable suspicion of criminal activity." We affirm, but for different reasons. We conclude that in relying on the dispatch from headquarters the officers were "lawfully performing an official function" when they commanded defendant to stop. Defendant's obligation to comply with that command did not depend on how a court at some later time might decide the overall constitutionality of the street encounter. Because the officers acted in good faith and under color of their authority, defendant violated the obstructing statute when he took flight, thus endangering himself, the police, and the public.

I.

At defendant's trial in Newark Municipal Court, the State presented its case through the testimony of Newark police officers Paul Williams and Matthew Milton. Shortly after midnight on March 15, 2002, while on patrol in a marked police car, Officers Williams and Milton received a radio dispatch reporting that there was a man armed with a gun at the Oasis Bar located on South Orange Avenue in Newark.[1] The dispatcher described the suspect as a young black male, 5 5 to 5 7 tall, weighing about 150 pounds, and wearing a green jacket, red shirt, blue jeans, and black

[1] Officer Williams testified that there was a report of a man with a handgun. Officer Milton testified that the dispatcher described a "suspect possibly carrying a weapon."

boots. Less than two minutes later, while traveling westbound on South Orange Avenue toward the bar, the two uniformed officers observed defendant walking eastbound "at a semi-brisk pace" with his hands in his jacket pockets. Defendant matched exactly the dispatcher's description of the suspect. Officer Williams referred to that part of South Orange Avenue as "[a] very high narcotics area," and to the Oasis as a "notorious bar" known for "[a] lot of weapons offenses."

Without activating the patrol car's siren or overhead lights, the officers made a U-turn and approached defendant from behind. As the patrol car pulled up alongside defendant, Officer Williams rolled down the passenger side window and called out, "Police. Stop. I need to speak with you."[2] In response, defendant "immediately turned and just started running." Officer Williams then pursued defendant on foot, while Officer Milton circled the block in the patrol car. Williams chased defendant through a parking lot and to an apartment complex, where defendant threw an object to the ground. Williams picked up the object, a small plastic bag, and resumed the pursuit, eventually cornering defendant at the bottom of an apartment complex stairwell. There, for the first time, the officer drew his gun. Williams arrested defendant, but found no weapon on him. The small plastic bag discarded earlier by defendant held twelve smaller plastic bags containing a white powder. A field test conducted by the officers indicated that the powder was cocaine.

---

[2] That was Officer William's recollection. Officer Milton testified that Williams rolled down his window and said to defendant, "Police. I'd like to talk to you for a minute."

Defendant gave an entirely different account of that evening's events. He testified that after leaving the home of a friend, he was walking down South Orange Avenue, when the patrol car made a U-turn. He claimed that both officers "jumped out" of the vehicle with their guns drawn, and because he was frightened, he ran. He denied that he discarded drugs.

II.

A.

Defendant was charged with four disorderly persons offenses: possessing and failing to deliver a controlled dangerous substance (CDS) to a law enforcement officer, in violation of *N.J.S.A.* 2C:35-10(c); possessing drug paraphernalia, in violation of *N.J.S.A.* 2C:36-2; loitering for purposes of obtaining or selling a CDS, in violation of *N.J.S.A.* 2C:33-2.1; and obstructing the administration of law or other governmental function, in violation of *N.J.S.A.* 2C:29-1.

At defendant's trial, the prosecutor presented only the empty outer bag discarded by defendant and none of the smaller bags allegedly containing cocaine, which apparently were lost. As a result, at the end of the State's case, the municipal court granted defendant's motion for a judgment of acquittal on the failing to deliver and loitering charges. In rendering its final verdict, the court found defendant guilty of obstructing the police officers in the lawful performance of their duties and not guilty of

possessing drug paraphernalia.[3] The court sentenced defendant to a one-year probationary term, along with appropriate fines, assessments, and court costs.

B.

In a trial de novo before the Superior Court, Law Division, defendant argued that because the police officers did not have reasonable suspicion for a constitutional stop, the officers were not "lawfully performing an official function" under *N.J.S.A.* 2C:29-1(a). He thus contended that his flight could not be the basis for a conviction. In rejecting that analysis, Superior Court Judge John C. Kennedy held that "[p]olice action which is reasonable under the totality of the circumstances, though mistaken from a constitutional perspective, is not 'unlawful' under *N.J.S.A.* 2C:29-1(a)." Accordingly, Judge Kennedy determined that he was not required to decide whether the police officers conducted "a constitutionally permissible investigatory stop," but only whether their actions were "objectively reasonable."

In reviewing the municipal court record, Judge Kennedy found that (1) the officers received a dispatch of a man with a gun in an area known for weapons offenses and narcotics activity; (2) the officers acted reasonably in investigating a reported crime; (3) defendant exactly fit the description of the suspect in the dispatch; (4) a uniformed police officer "unambiguously" told defendant to stop; and (5) defendant's flight created a "grave risk of

---

[3] The drug paraphernalia possession charge was premised on defendant's possession of the outer plastic bag, which, as noted, was the only physical evidence produced by the State.

injury to both the police officers and others." Judge Kennedy stressed that merely because the police might have stepped over a constitutionally imposed line, that did not allow defendant to ignore a police order and thus "to risk the safety of the officers or others by embarking upon a flight." Under those circumstances, Judge Kennedy concluded that defendant's flight constituted a violation of *N.J.S.A.* 2C:29-1(a), and therefore he found defendant guilty of the obstructing charge. Judge Kennedy sentenced defendant to the same probationary term he received in municipal court and imposed appropriate fees and penalties.

C.

In an unpublished opinion, the Appellate Division affirmed defendant's conviction. Unlike the Law Division, the panel directly addressed the constitutionality of the police encounter with defendant and found that the investigatory stop was based on reasonable suspicion. Because the panel held that the stop complied with both the Fourth Amendment of the Federal Constitution and Article I, Paragraph 7 of the New Jersey Constitution, it followed that the police officers were acting "lawfully" under the obstruction statute.

In reaching its decision, the panel first rejected the State's argument that defendant had waived his constitutional claim by failing to challenge the lawfulness of his seizure in a motion to suppress filed pursuant to *Rule* 3:5-7. The panel noted that the issue on appeal did not concern whether illegally obtained evidence should be suppressed; after all, defendant did not move to suppress any evidence. Rather, according to the panel, the issue

concerned "whether defendant's flight from the police can be constitutionally criminalized," a matter properly raised in the context of the trial itself.

Next, the panel accepted that "defendant was detained or 'stopped' for investigatory purposes." Because the panel found that the "investigatory stop was based on specific and articulable facts which . . . gave rise to a reasonable suspicion of criminal activity," it concluded that the stop was constitutional and therefore defendant's flight "constituted a proper basis for a violation of *N.J.S.A.* 2C:29-1a."[4]

We granted defendant's petition for certification. 185 *N.J.* 297, 884 *A.*2d 1266 (2005). We also granted the Association of Criminal Defense Lawyers of New Jersey leave to participate as amicus curiae.

III.

We must determine whether defendant, when he ran from the police after receiving an order to stop for questioning, violated *N.J.S.A.* 2C:29-1. That statute provides:

> A person commits an offense if he purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant

---

[4] Defendant also argued on appeal that *N.J.S.A.* 2C:29-1 was facially unconstitutional because it criminalized constitutionally protected conduct. Because the court decided the issue based on the constitutionality of the investigatory stop of defendant, it rejected as irrelevant defendant's facial challenge to the constitutionality of the act, which, the panel reasoned, "would only be pertinent if we were reviewing a field inquiry as the prelude to the charge."

> from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act.

[*N.J.S.A.* 2C:29-1(a).]

To obtain a conviction under the obstructing statute, the State was required to prove beyond a reasonable doubt that defendant purposely obstructed Officers Williams and Milton "from lawfully performing an official function by means of flight." Simply put, the question here is whether the two officers, who relied on a dispatch describing an armed man in the area of a bar, were "lawfully performing an official function" when they sought to stop and question defendant.

A.

We begin by noting our agreement with the Appellate Division that defendant was not required to raise his constitutional claim in a motion to suppress under *Rule* 3:5-7. That rule provides that "a person claiming to be aggrieved by an unlawful search and seizure and having reasonable grounds to believe that the evidence obtained may be used against him or her in a penal proceeding" may file a motion to suppress that evidence. *R.* 3:5-7(a). Defendant was not seeking to suppress potentially damaging evidence acquired through an alleged unreasonable search or seizure. Defendant simply contended that because the stop was an unconstitutional seizure, the State did not prove that the police officers were "lawfully performing an official function" – an element of the offense of obstruction. The State had the burden of proving that the officers were acting "lawfully," however that term is

defined. In challenging the evidence of guilt, defendant was entitled to argue that if the officers acted unconstitutionally, they could not have acted "lawfully" under the statute. That challenge did not require the filing of a suppression motion pursuant to *Rule* 3:5-7.

B.

We next turn to the central issue in this case, whether Officers Williams and Milton were "lawfully performing an official function" when they commanded defendant to stop. If they were not "lawfully performing" their duties, then the State failed to establish an essential element of obstructing. Because defendant and the State dispute the meaning of those words, we must determine what the Legislature intended when it enacted *N.J.S.A.* 2C:29-1.

Defendant essentially maintains that as a matter of common usage, the terms "lawful" and "constitutional" are interchangeable. Defendant urges that if police officers conduct an unconstitutional stop, they necessarily cannot be "lawfully performing an official function." Applying that principle to the facts, defendant asserts that Officers Williams and Milton did not possess the reasonable suspicion required by the Federal and State Constitutions to justify an investigatory stop and therefore could not have been acting "lawfully" pursuant to the statute. Under that construct, with the State falling short of proving an element of obstruction, defendant would be entitled to an acquittal despite his flight.

The State, on the other hand, contends that the encounter met the constitutional test for an investigatory stop. Alternatively, and more importantly, the State submits that defendant's obligation to obey the police

officers' command to stop did not depend on whether a court might later decide that the officers possessed the requisite suspicion for the stop. The State basically reasons that an after-the-fact constitutional analysis in the calm and reflective atmosphere of a courtroom does not alter whether the officers were lawfully performing their duties for purposes of the statute. Any other interpretation of the statute, according to the State, would invite a person in a street encounter to flee or resist a police command if he believed the police lacked the constitutional authority for the stop. From the State's viewpoint, when police officers, under color of their authority and in good faith, order a person to stop for questioning based on a dispatch from headquarters, that person violates the obstructing statute if he attempts to thwart the police by fleeing.

C.

As noted earlier, the Appellate Division concluded that the police officers engaged in a constitutional investigatory stop and, by definition, were "lawfully performing an official function." We agree with the Appellate Division that there is substantial credible evidence in the record to support the findings of the municipal court and Law Division that Officer Williams ordered defendant to stop for questioning, and that defendant clearly understood that command. Thus, we also agree that defendant was "seized" for purposes of our Federal and State Constitutions. *See State v. Stovall,* 170 *N.J.* 346, 355, 788 *A.*2d 746 (2002) (stating that Article I, Paragraph 7 of New Jersey Constitution and Fourth Amendment to United States Constitution "protect a person's right to be free from unreasonable searches and seizures," and that seizure

occurs when, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave" (internal quotation marks and alteration omitted)).

The much more difficult question is whether that seizure, which occurred pursuant to an investigatory stop, was reasonable under our Federal and State Constitutions. *See State v. Pineiro,* 181 *N.J.* 13, 20, 853 *A.*2d 887 (2004) ("[A]n investigatory stop, sometimes referred to as a *Terry* stop, is valid 'if it is based on specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity.'" (quoting *State v. Nishina,* 175 *N.J.* 502, 510-11, 816 *A.*2d 153 (2003)) (footnote omitted)). We need not resolve whether the investigatory stop in this case met that constitutional standard because, ultimately, we conclude that under *N.J.S.A.* 2C:29-1 a police officer acting on a dispatch may be "lawfully performing an official function" even if a court later determines that reasonable suspicion was lacking to justify the stop.[5] *See Donadio v. Cunningham,* 58 *N.J.* 309, 325-26, 277 A.2d

[5] We acknowledge that the facts of this case are in many respects similar to those in *Florida v. J.L.,* 529 *U.S.* 266, 120 *S.Ct.* 1375, 146 *L.Ed.*2d 254 (2000). In that case, police received a tip from an anonymous caller that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.* at 268, 120 *S.Ct.* at 1377, 146 *L.Ed.*2d at 258-59. Within minutes, the officers responded, saw a person at the bus stop matching the description, and, based on nothing more than the anonymous tip, approached and frisked the suspect. *Id.* at 268, 120 *S.Ct.* at 1377, 146 *L.Ed.*2d at 259. The Court held "that an anonymous tip lacking indicia of reliability . . . does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm." *Id.* at 274, 120 *S.Ct.* at 1380, 146 *L.Ed.*2d at 262.

375 (1971) ("[A] court should not reach and determine a constitutional issue unless absolutely imperative in the disposition of the litigation.").

We are persuaded that the Legislature, in enacting the current version of *N.J.S.A.* 2C:29-1, did not intend that a person involved in a police encounter should have an incentive to flee or resist, thus endangering himself, the police, and the innocent public. In this case, defendant's headlong flight triggered a dangerous pursuit by police officers who thought defendant was armed with a gun. We believe that the Legislature intended that, when a police officer is acting in good faith and under color of his authority, a person must obey the officer's order to stop and may not take flight without violating *N.J.S.A.* 2C:29-1. We have reached that conclusion by following standard principles of statutory construction.

IV.

The paramount goal in interpreting a statute is to divine the intent of the Legislature. *DiProspero v. Penn,* 183 *N.J.* 477, 492, 874 *A.*2d 1039 (2005). In doing so, we first look to the plain language of the statute. *Ibid.* If the statutory language is ambiguous and could lead to more than one plausible interpretation, we may turn to legislative history, including a sponsor's statement, as well as other interpretative aids. *Id.* at 492-93, 874 *A.*2d 1039. Although "[w]e ascribe to the statutory words their ordinary meaning and significance," we do not read them in a vacuum, but rather "in context with related provisions so as to give sense to the legislation as a whole." *Id.* at 492, 874 *A.*2d 1039. We do not read the language literally if that would lead to an absurd result or a result completely

at odds with the overall statutory scheme. *Aponte-Correa v. Allstate Ins. Co.*, 162 *N.J.* 318, 323, 744 *A.*2d 175 (2000) ("Where a literal reading will lead to a result not in accord with the essential purpose and design of the act, the spirit of the law will control the letter."); *Bd. of Educ. v. Caffiero*, 86 *N.J.* 308, 317, 431 *A.*2d 799 ("A statute should not be read literally where such a reading is contrary to its purposes."), *appeal dismissed*, 454 *U.S.* 1025, 102 *S.Ct.* 560, 70 *L.Ed.*2d 470 (1981). In construing a statute, we attempt to capture the essence of the law – its logic, sense, and spirit – to achieve a result contemplated by the Legislature. *Aponte-Correa, supra*, 162 *N.J.* at 323, 744 *A.*2d 175 (stating that goal of statutory interpretation is "to effectuate the fundamental purpose for which the legislation was enacted" (internal quotation marks omitted)).

A.

The State and defendant hotly dispute the import of the words "lawfully performing an official function" in the context of *N.J.S.A.* 2C:29-1 and surrounding statutes. Because the face of the statute might suggest plausible alternate interpretations, we next look at related statutes and legislative history to shed light on the contested language. *See* 2B Norman J. Singer, *Sutherland Statutory Construction* § 51.03 (5th ed. 1992) ("Statutes are considered to be in pari materia when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object." (footnote omitted)).

We first review a related statute, *N.J.S.A.* 2C:29-2, which makes it a crime to resist arrest or elude the police. Subsection (a) of that statute makes it a fourth-degree

crime if a person "by flight, purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest." *N.J.S.A.* 2C:29-2(a)(2). By the express terms of the statute, a person has no right to resist arrest by flight or any other means, even if the arrest constitutes an unreasonable seizure under the constitution. *N.J.S.A.* 2C:29-2(a) provides: "It is not a defense to a prosecution [for resisting arrest] that the law enforcement officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority and provided the law enforcement officer announces his intention to arrest prior to the resistance." That provision codified this State's then-existing common law, which required that a person submit to an arrest, even if illegal. *See State v. Mulvihill,* 57 *N.J.* 151, 155-56, 270 *A.*2d 277 (1970) ("[I]n our State[,] when an officer makes an arrest, legal or illegal, it is the duty of the citizen to submit."); *State v. Koonce,* 89 *N.J.Super.* 169, 184, 214 *A.*2d 428 (App.Div.1965) ("[W]e declare it to be the law of this State that a private citizen may not use force to resist arrest by one he knows or has good reason to believe is an authorized police officer engaged in the performance of his duties, whether or not the arrest is illegal under the circumstances obtaining.").

This State's pre-Code common law rule forbidding resistance to an arrest when police officers act in good faith and under color of their authority furthered the important public policy of discouraging self-help. The policy recognized that in a society governed by laws our courts are the proper forum for challenges to the misuse of official power and for the vindication of rights. It was understood that resisting arrest greatly increases the likelihood of physical harm to both the arresting officers and the suspect, as well as to innocent bystanders.

Addressing that subject in *State v. Koonce, supra,* Judge Conford wrote that a system of ordered liberty cannot tolerate "any formulation [of the law] which validates an arrestee's resistance of a police officer with force merely because the arrest is ultimately adjudged to have been illegal." 89 *N.J.Super.* at 183, 214 *A.*2d 428. Judge Conford further elaborated on the point:

> Force begets force, and escalation into bloodshed is a frequent probability. The right or wrong of an arrest is often a matter of close debate as to which even lawyers and judges may differ. In this era of constantly expanding legal protections of the rights of the accused in criminal proceedings, one deeming himself illegally arrested can reasonably be asked to submit peaceably to arrest by a police officer, and to take recourse in his legal remedies for regaining his liberty and defending the ensuing prosecution against him. At the same time, police officers attempting in good faith, although mistakenly, to perform their duties in effecting an arrest should be relieved of the threat of physical harm at the hands of the arrestee.

[*Id.* at 183-84, 214 *A.*2d 428.]

Similarly, under the eluding statute, *N.J.S.A.* 2C:29-2(b), a person driving a motor vehicle who receives a police order to stop must comply, whether or not the police have met the applicable constitutional standard to justify the stop. That statute provides that a person commits a crime if "while operating a motor vehicle . . . [he] knowingly flees or attempts to elude any police or law enforcement officer after having received any signal from such officer to bring the vehicle . . . to a full stop." *N.J.S.A.* 2C:29-2(b). Unlike the resisting arrest statute, *N.J.S.A.* 2C:29-2(b) does not

explicitly state that an unlawful stop is not a defense to eluding. Nevertheless, in *State v. Seymour,* 289 *N.J.Super.* 80, 86-87, 672 *A.*2d 1273 (App.Div.1996), the Appellate Division applied "the same public policy considerations" expressed in *Koonce, supra,* and held that a person is guilty of eluding if he fails "to bring his vehicle to a full stop immediately after receiving any law enforcement officer's signal, whether the officer's stop of the vehicle is legal or illegal." The Appellate Division recognized that flight "from the police in a motor vehicle with the police in vehicular pursuit could endanger defendant, the officer, other motorist[s], or pedestrians." *Seymour, supra,* 289 *N.J.Super.* at 87, 672 *A.*2d 1273. Likewise, in a prosecution for escape "from a prison or other custodial facility," *N.J.S.A.* 2C:29-5(d) eliminates any defense based on "[i]rregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority."

Those sister statutes to the obstructing statute, either in their express language or by judicial construction, declare that a defendant has no right to commit the crime of resisting arrest, eluding, or escape in response to an unconstitutional stop or detention. For compelling public safety reasons, the resisting arrest, eluding, and escape statutes and interpretive case law require that a defendant submit to an illegal detention and that he take his challenge to court.[6] *See State v. Casimono,* 250 *N.J.Super.*

---

[6] Examples abound of defendants whose flight from the police set in motion an ensuing chase that resulted in death or serious injury either to a police officer, a suspect, or a bystander. *See, e.g., Levandoski v. Cone,* 267 *Conn.* 651, 841 *A.*2d 208, 211 (2004) (describing police encounter with suspect who fled into nearby woods where pursuing officer fell off ledge suffering severe injuries); *People v. Hickman,* 59

(Continued on following page)

173, 183, 593 *A.*2d 827 (App.Div.1991) ("There is a solid line of authority in other jurisdictions holding that an illegal detention or search ordinarily will not bar a conviction for an assault, escape or other unlawful response committed by the person subjected to the unlawful police action."), *certif. denied,* 127 *N.J.* 558, 606 *A.*2d 370, *cert. denied,* 504 *U.S.* 924, 112 *S.Ct.* 1978, 118 *L.Ed.*2d 577 (1992).

The same public policy concerns underlying those statutes equally apply to the obstructing statute, *N.J.S.A.* 2C:29-1. When defendant fled after Officer Williams told him to stop, he instigated a nighttime police chase, with one officer in pursuit on foot and another in a patrol car, through an apartment complex in a dangerous section of Newark. Because the officers received a report that defendant was armed, they undoubtedly were concerned for their personal safety and prepared to use deadly force if necessary. Indeed, when Officer Williams cornered defendant in an apartment complex stairwell, he pulled his service revolver. In short, defendant's failure to obey a police command and the ensuing pursuit created a substantial risk of harm to the police officers, defendant, and unsuspecting members of the public.

---

*Ill.*2d 89, 319 *N.E.*2d 511, 511-12 (1974) (describing police chase of fleeing burglars that resulted in one officer accidentally shooting to death fellow officer), *cert. denied,* 421 *U.S.* 913, 95 *S.Ct.* 1571, 43 *L.Ed.*2d 779 (1975); *People v. Zierlion,* 16 *Ill.*2d 217, 157 *N.E.*2d 72, 72-73 (1959) (describing police shooting of fleeing suspects, one fatally, after disregard of police commands); *Rucker v. Harford County,* 316 *Md.* 275, 558 *A.*2d 399, 400 (1989) (describing police chase of theft suspect through cornfield that resulted in shooting of civilian bystander); *State v. Mendoza,* 80 *Wis.*2d 122, 258 *N.W.*2d 260, 263-64 (1977) (describing shooting deaths of two police officers by fleeing suspect).

B.

We are not persuaded that the Legislature intended the textual differences between the obstructing statute and its sister statutes to lead to an outcome at odds with the overall statutory scheme or an outcome with absurd results. Under defendant's construct, if the police officer had called out, "Stop, you're under arrest," his flight would have subjected him to a resisting arrest conviction under *N.J.S.A.* 2C:29-2(a), despite an unconstitutional seizure. If defendant had been in a car and the officers signaled for him to stop and pull over to the side of the road, his flight would have subjected him to an eluding conviction under *N.J.S.A.* 2C:29-2(b), despite an unconstitutional seizure. However, defendant argues that because the police officer said only, "Stop. I need to speak with you," his flight does not subject him to an obstruction conviction under *N.J.S.A.* 2C:29-1.

We cannot conclude that the Legislature intended to penalize a suspect's flight under the resisting arrest and eluding statutes, but not under the obstructing statute, when in all three circumstances a police stop is later adjudged constitutionally improper. Stated another way, we cannot believe that the Legislature intended to protect police officers and the public when flight is from an attempted arrest or motor vehicle stop, but not from an attempted investigatory stop. After all, defendant's refusal to obey the officer's command to stop set off a chase along with the attendant danger of escalating violence no different than if he had disobeyed a command to submit to an arrest. It can hardly be expected that police officers receiving a dispatch describing an armed man would do nothing when they came face-to-face with that man.

It is understood "that effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information." *United States v. Robinson,* 536 *F.*2d 1298, 1299 (9th Cir.1976); *see also United States v. Hensley,* 469 *U.S.* 221, 230-31, 105 *S.Ct.* 675, 681, 83 *L.Ed.*2d 604, 613 (1985) (explaining that information possessed by dispatcher was imputed to responding police officers, and that dispatcher's knowledge, not responding officers', was essential for determining probable cause); *Whiteley v. Warden of Wyo. State Penitentiary,* 401 *U.S.* 560, 568, 91 *S.Ct.* 1031, 1037, 28 *L.Ed.*2d 306, 313 (1971) (holding that police who arrested and searched defendant were entitled to rely and act on radio bulletin and stating that "police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause"). For example, if the dispatcher in this case had been provided adequate facts from a reliable informant to establish a reasonable suspicion that defendant was armed, common sense tells us that the dispatcher had the power to delegate the actual stop to officers in the field. *See Robinson, supra,* 536 *F.*2d at 1300. On the other hand, if the information received by the dispatcher or headquarters fell short of the suspicion required by law for an investigatory stop, the fact that Officers Williams and Milton relied in good faith on the dispatch would not make the stop a constitutional one. *See ibid.* Ultimately, the State must prove that a warrantless, investigatory stop was based on reasonable and articulable suspicion, and failing that any evidence

obtained as a result of an unconstitutional stop must be suppressed. *See id.* at 1299-1300.

However, a person has no constitutional right to endanger the lives of the police and public by fleeing or resisting a stop, even though a judge may later determine the stop was unsupported by reasonable and articulable suspicion. *See United States ex rel. Kilheffer v. Plowfield,* 409 *F.Supp.* 677, 680 (E.D.Pa.1976) (holding that "absent unusual circumstances there exists no . . . federal constitutional right" to resist unlawful arrest); *People v. Curtis,* 70 *Cal.*2d 347, 74 *Cal.Rptr.* 713, 450 *P.*2d 33, 36-37 (1969) (holding that duty to refrain from resisting unlawful arrest does not violate Fourth Amendment prohibition against unreasonable seizures); *Ellison v. State,* 410 *A.*2d 519, 524-26 (Del.Super.Ct.1979) (holding that defendant had no Fourth Amendment right to resist unconstitutional arrest by fleeing), *aff'd,* 437 *A.*2d 1127 (Del.1981) (per curiam), *cert. denied,* 455 *U.S.* 1026, 102 *S.Ct.* 1730, 72 *L.Ed.*2d 147 (1982); *State v. Mather,* 28 *Wash.App.* 700, 626 *P.*2d 44, 47 (1981) ("The constitutional right to be free from unreasonable searches and seizures does not create a constitutional right to react unreasonably to an illegal detention. The police power, therefore, may lawfully extend to prohibiting flight from an unlawful detention where that flight indicates a wanton and wilful disregard for the life and property of others." (footnote omitted)); *see also Evans v. City of Bakersfield,* 22 *Cal.App.*4th 321, 27 *Cal.Rptr.*2d 406, 412, 413 (1994) (concluding that "self-help not infrequently causes far graver consequences for both the officer and the suspect than does the unlawful arrest itself" and for similar reasons, "there is no right to use force, reasonable or otherwise, to resist an unlawful detention"); *Elliott v. State,* 230 *Ga.App.* 855, 497 *S.E.*2d

817, 819 (1998) (holding that defendant did not have "right to flee a police stop upon his unilateral determination that the stop was pretextual"); *State v. Laughlin,* 281 *Mont.* 179, 933 *P.*2d 813, 814-15 (1997) (finding no right to resist unlawful arrest); *Am. Fork City v. Pena-Flores,* 14 *P.*3d 698, 701 (Utah Ct.App.2000) ("So long as a police officer is acting within the scope of his or her authority and the detention or arrest has the indicia of being lawful, a person can be guilty of interfering with a peace officer even when the arrest or detention is later determined to be unlawful."), *aff'd,* 63 *P.*3d 675 (Utah 2002).

Although those cases deal mostly with resisting arrest, we see no practical or public-policy-based distinction between fleeing from an arrest and fleeing from an investigatory detention. *See Melson v. Municipality of Anchorage,* 60 *P.*3d 199, 201-02 (Alaska Ct.App.2002) (noting that safety-driven policy considerations requiring person not to flee from unconstitutional arrest "apply just as strongly to investigative stops"). A person has no constitutional right to use an improper stop as justification to commit the new and distinct offense of resisting arrest, eluding, escape, or obstruction, thus precipitating a dangerous chase that could have deadly consequences. *See United States v. Bailey,* 691 *F.*2d 1009, 1017 (11th Cir.1982) ("[W]here the defendant's response [to police action] is itself a new, distinct crime, there are strong policy reasons for permitting the police to arrest him for that crime. A contrary rule would virtually immunize a defendant from prosecution for all crimes he might commit that have a sufficient causal connection to the police misconduct."), *cert. denied,* 46 *U.S.* 933, 103 *S.Ct.* 2098, 77 *L.Ed.*2d 306 (1983). Quite simply, in a society governed by the rule of law, constitutional decisionmaking cannot be

left to a suspect in the street. *See Koonce, supra,* 89 *N.J.Super.* at 183-84, 214 *A.*2d 428.

We must be mindful that a suspect who is the subject of an arrest, a motor vehicle stop, or an investigatory stop is not privy to the information motivating the police action. Therefore, while on the street, the suspect is in no position to challenge the information possessed by the police. The suspect may in fact have committed no offense, but he cannot be the judge of his own cause and take matters into his own hands and resist or take flight. The proper forum to challenge supposed unlawful police conduct is in court. *See Curtis, supra,* 74 *Cal.Rptr.* 713, 450 *P.*2d at 37 ("There is no constitutional impediment to the state's policy of removing controversies over the legality of an arrest from the streets to the courtroom.").

The conclusion that *N.J.S.A.* 2C:29-1 should be construed to require submission even to an unlawful stop is reinforced by the statutory history of the 2000 amendment to the obstructing statute. The 2000 amendment added "flight" as one means by which a person could "prevent[ ] or attempt[ ] to prevent a public servant from lawfully performing an official function" in violation of the obstructing statute. *L.* 2000, *c.* 18, § 1. The Senate Judiciary Committee Statement to Senate Bill No. 828 provided that the new law would "specifically include 'flight' as an activity prohibited by the provisions of 2C:29-1. An example of the type of conduct that this change is intended to cover would be flight to avoid being questioned by a law enforcement officer." Senate Judiciary Committee, *Statement to Senate Bill No. 828,* at 1 (Feb. 17, 2000).

We hold that a defendant may be convicted of obstruction under *N.J.S.A.* 2C:29-1 when he flees from an investigatory stop, despite a later finding that the police action was unconstitutional. That is so even though, had defendant only held his ground, the unconstitutional stop would have resulted in the suppression of evidence seized from him.[7] In summary, *N.J.S.A.* 2C:29-1 makes it a crime to obstruct a police officer "lawfully performing an official function by means of flight." Viewing the statute in relation to the resisting arrest, eluding, and escape statutes, we construe "lawfully performing an official function" to mean a police officer acting in objective good faith, under color of law in the execution of his duties.[8] *Cf. State v. Lashinsky,* 81 *N.J.* 1, 11, 404 *A.*2d 1121 (1979) ("[W]here an officer's instructions are obviously reasonable, in furtherance of his duties, an individual toward whom such instructions are directed has a correlative duty to obey them. If his refusal to respond results in an obstruction of

[7] We disapprove of the statement in *State v. Williams,* 381 *N.J.Super.* 572, 577, 887 *A.*2d 190 (App.Div.2005), that "a citizen's nonviolent flight from an [unconstitutional] search and seizure cannot be validly criminalized" under *N.J.S.A.* 2C:29-1. As we have discussed, any flight from police detention is fraught with the potential for violence because flight will incite a pursuit, which in turn will endanger the suspect, the police, and innocent bystanders.

[8] We emphasize that a prerequisite for a conviction under *N.J.S.A.* 2C:29-1 is that the police officer act in good faith. Among other things, good faith means "honesty in belief or purpose" and "faithfulness to one's duty or obligation." *Black's Law Dictionary* 701 (7th ed.1999). A police officer who *reasonably* relies on information from headquarters in responding to an emergency or public safety threat may be said to be acting in good faith under the statute. However, a police officer who without any basis arbitrarily detains a person on the street would not be acting in good faith. Contrary to any suggestion by our dissenting colleagues, *post* at 468, 901 *A.*2d at 940, for purposes of *N.J.S.A.* 2C:29-1, good faith is an objective, not a subjective, standard.

the performance of the officer's proper tasks, this will constitute a violation of the disorderly persons statute." (citation omitted)).[9]

C.

We next determine that because Officers Williams and Milton acted in objective good faith and under color of their authority in attempting an investigatory stop of defendant, they were "lawfully performing an official function." At approximately 12:10 a.m., while on patrol, the two uniformed officers received a dispatch describing a man armed with a gun outside the Oasis Bar, an establishment notorious for "[a] lot of weapons offenses." Less than two minutes later, the officers saw defendant, who precisely fit the dispatcher's description of the armed suspect, walking on the same street as the bar. Relying on the dispatcher's information and acting with precaution, the officers attempted to stop and talk to defendant. We see nothing unreasonable about the steps taken by those officers. The report of a man walking the streets of Newark with a gun is a clear and present danger that requires

[9] Defendant's reliance on United States Supreme Court cases reviewing stop-and-identify statutes is misplaced. Both *Hiibel v. Sixth Judicial District Court*, 542 *U.S.* 177, 124 *S.Ct.* 2451, 159 *L.Ed.*2d 292 (2004), and *Brown v. Texas*, 443 *U.S.* 47, 99 *S.Ct.* 2637, 61 *L.Ed.*2d 357 (1979), held that a suspect's refusal to provide identification could not be criminalized unless the police had reasonable suspicion for the stop. *Hiibel, supra*, 542 *U.S.* at 184, 187-89, 124 *S.Ct.* at 2457, 2459-60, 159 *L.Ed.*2d at 302, 304; *Brown, supra*, 443 *U.S.* at 52-53, 99 *S.Ct.* at 2641, 61 *L.Ed.*2d at 363. Those cases are inapposite because failure to identify oneself does not create a danger to police or the public. A person's headlong flight in the face of a police request to stop involves risks and hazards that are not present when a person merely refuses to identify himself to the police.

prompt investigation. The failure to act would have constituted a dereliction of duty.

In conclusion, we find that sufficient credible evidence in the record supports the findings that Officers Williams and Milton reasonably relied on a dispatch from headquarters and therefore were "lawfully performing an official function" – an attempted investigatory stop – when defendant obstructed their efforts by fleeing.

V.

For the reasons explained in this opinion, we affirm the judgment of the Appellate Division upholding defendant's conviction of obstruction in violation of *N.J.S.A.* 2C:29-1.

Justice WALLACE, JR., dissenting.

I respectfully dissent. I do not agree with the majority's conclusion that a police officer is "lawfully performing an official function" under *N.J.S.A.* 2C:29-1(a) when he makes an invalid investigatory stop. I agree with the Appellate panel's observation that if the police contact with defendant was a field inquiry, "then defendant would have been free to leave the area and his failure to heed the officer's request to stop and speak with the officers could not have been criminalized." Because I conclude that the police lacked articulable suspicion to perform a valid investigatory stop, but could have conducted a field inquiry, defendant's flight was not a violation of the obstruction statute, *N.J.S.A.* 2C:29-1.

Patrolman Williams testified that he and Patrolman Milton drove past defendant, who matched the description in an anonymous report of an armed individual at the

Oasis Bar. Milton made a u-turn and approached defendant from the rear. Williams rolled down his window and said, "Police. Stop. I need to speak with you" or "I need to talk to you." Milton recalled that Williams said, "Police. I'd like to talk to you for a minute." Both officers agreed that defendant ran in response. The trial court convicted defendant of violating *N.J.S.A.* 2C:29-1.

When interpreting a statute, this Court's role is to effectuate the will of the Legislature. *State v. Brannon,* 178 *N.J.* 500, 505, 842 *A.*2d 148 (2004). We look first to the language of the statute. *Id.* at 506, 842 *A.*2d 148. "If the statute is clear and unambiguous on its face and admits of only one interpretation, we need delve no deeper than the act's literal terms to divine the Legislature's intent." *State v. Butler,* 89 *N.J.* 220, 226, 445 *A.*2d 399 (1982) (citations omitted). If the statute is not clear or is ambiguous, courts must look beyond its literal language to determine the legislative intent. *Id.* at 226-27, 445 *A.*2d 399. "However, in criminal cases we are guided by the rule of lenity, which requires us to construe penal statutes strictly and interpret ambiguous language in favor of a criminal defendant." *State v. Livingston,* 172 *N.J.* 209, 218, 797 *A.*2d 153 (2002).

The clear language of *N.J.S.A.* 2C:29-1, which criminalizes "prevent[ing] or attempt[ing] to prevent a public servant from lawfully performing an official function by means of flight," requires that the public servant be engaged in a lawful official function for an individual's flight to be in violation of the statute. I reach that conclusion by the plain reading of the statute and by examination of similar statutes that do not use the word "lawfully." For example, *N.J.S.A.* 2C:29-2(b), which pertains to eluding, provides that "any person, while operating a

motor vehicle . . . , who knowingly flees or attempts to elude any police or any law enforcement officer after having received any signal from such officer to bring the vehicle . . . to a full stop commits a crime . . . " *Ibid.* Unlike the obstruction statute, the Legislature did not condition an eluding conviction on the law enforcement officer engaging in a lawful signal.

Similarly, *N.J.S.A.* 2C:29-2(a), resisting arrest, was amended in 2000 to provide that "a person is guilty of a disorderly persons offense if he purposely prevents . . . a law enforcement officer from effecting an arrest." *N.J.S.A.* 2C:29-2(a)(1). The amendment deleted the word "lawful" before the word "arrest." Thus, the Legislature removed the language requiring a lawful arrest and added language to explicitly allow an individual to be convicted of resisting arrest regardless of whether the arrest was lawful or not. *N.J.S.A.* 2C:29-2(a)(3)(b).

Notably, the Legislature did not eliminate "lawfully" from *N.J.S.A.* 2C:29-1, when it amended *N.J.S.A.* 2C:29-2a in 2000. Consequently, I find the relevant language of *N.J.S.A.* 2C:29-1 to be clear and unambiguous. The Legislature intended that the public servant must be "lawfully performing" an "official function" for the statute to criminalize flight.

Although the majority recognizes that the sister statutes to *N.J.S.A.* 2C:29-1 do not require "lawful" conduct by the police, it surmises that the Legislature did not intend "the textual differences between the obstructing statute and its sister statutes to lead to an outcome at odds with the overall statutory scheme or an outcome with absurd results." *Ante* at 456, 901 A.2d at 933. I disagree. The majority, in its effort to reach a reasonable, but wrong,

decision, ignores the plain meaning of the statute requirement and eliminates the rule of construction that we construe penal statutes strictly. It also overlooks the fact that the basis for the rule of lenity is a "fear that expansive judicial interpretations will create penalties not originally intended by the Legislature." *State v. Wooten,* 73 *N.J.* 317, 326, 374 *A.*2d 1204 (1977) (citation omitted).

Moreover, the out-of-state cases cited by the majority were decided under different statutory schemes and, therefore, provide no guidance for deciding this case. Unlike the situation in most of those cited cases that concerned arrests, the majority opinion interprets *N.J.S.A.* 2C:29-1 to apply to police conduct that would violate a defendant's right to leave a police encounter and does not address whether the police were conducting a lawful investigatory stop or a field inquiry. In my view, if the stop was a lawful investigatory stop, then the obstruction statute applies. If it was a field inquiry, then the statute does not apply to criminalize defendant's flight.

The next step in this analysis is to determine whether the police conducted a lawful investigatory stop. On several occasions, we have reviewed the constitutionally permissible forms of warrantless police encounters with citizens. *State v. Pineiro,* 181 *N.J.* 13, 20, 853 *A.*2d 887 (2004); *State v. Nishina,* 175 *N.J.* 502, 510-11, 816 *A.*2d 153 (2003); *State v. Maryland,* 167 *N.J.* 471, 482-83, 771 *A.*2d 1220 (2001). Those encounters may be based on probable cause to arrest, reasonable articulable suspicion to conduct an investigatory stop, or a field inquiry. It is not disputed that in the present case, the police lacked probable cause to arrest defendant, thus, we need only consider whether the encounter was an investigatory stop or a field inquiry.

An investigatory stop, also referred to as a *Terry*[10] stop, is valid if it is based on "specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity." *Nishina, supra,* 175 *N.J.* at 511, 816 *A.*2d 153 (quotation omitted).

A field inquiry occurs when a police officer approaches an individual and asks "if [the person] is willing to answer some questions." *Id.* at 510, 816 *A.*2d 153 (quotation omitted). Such questioning is permissible so long as it is "not harassing, overbearing, or accusatory in nature." *Ibid.* (citation omitted). "The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way." *Maryland, supra,* 167 *N.J.* at 483, 771 *A.*2d 1220, (quoting *Florida v. Royer,* 460 *U.S.* 491, 497-98, 103 *S.Ct.* 1319, 1324, 75 *L.Ed.*2d 229, 236 (1983)) (citations omitted).

In the present case, it is obvious that the police were attempting to make a *Terry* stop. Thus, I look to whether there were specific and articulable facts that gave rise to a reasonable suspicion of criminal activity to warrant such a stop. Police asserted that the reason for the stop was that defendant fit the anonymous tipster's description of the person who possessed a gun.

When the source of the report is unknown, the United States Supreme Court requires more than a tip to validate an investigatory stop and frisk. *Florida v. J.L.,* 529 *U.S.* 266, 120 *S.Ct.* 1375, 146 *L.Ed.*2d 254 (2000). In *J.L.,*

---

[10] *Terry v. Ohio,* 392 *U.S.* 1, 88 *S.Ct.* 1868, 20 *L.Ed.*2d 889 (1968).

supra, an anonymous caller informed the police that a young black male wearing a plaid shirt was standing at a particular bus stop and was carrying a gun. 529 *U.S.* at 268, 120 *S.Ct.* at 1377, 146 *L.Ed.*2d at 259. The police arrived at the bus stop and observed three black males, one of whom was wearing a plaid shirt. *Ibid.* The police arrested the man fitting the description, and a search revealed a gun. *Ibid.* The Supreme Court unanimously held that the tipster's information was not sufficiently reliable to justify the stop and frisk that revealed the handgun in the defendant's possession. *Id.* at 271-72, 120 *S.Ct.* at 1379, 146 *L.Ed.*2d at 260-61. Writing for the Court, Justice Ginsburg explained that

> [t]he anonymous call concerning [the defendant] provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting [the defendant] of engaging in unlawful conduct. The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about [the defendant].

[*Id.* at 271, 120 *S.Ct.* at 1379, 146 *L.Ed.*2d at 260-61.]

In addressing the accurate description of a subject's readily observable location and appearance, Justice Ginsburg explained that such information "will help the police correctly identify the person whom the tipster

means to accuse," but "[t]he reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.* at 272, 120 *S.Ct.* at 1379, 146 *L.Ed.*2d at 261.

This Court addressed a similar issue in *State v. Rodriguez,* 172 *N.J.* 117, 796 *A.*2d 857 (2002). In that case, an anonymous caller informed the police that two men carrying drugs would return from Philadelphia by bus between 3:30 p.m. and 5 p.m. *Id.* at 121, 796 *A.*2d 857. The caller gave a detailed description of the men. *Id.* at 121-22, 796 *A.*2d 857. Around 4:45 p.m., the police observed two men fitting the description exit a bus from Philadelphia. *Ibid.* The police approached the men, who agreed to talk and subsequently consented to a search. *Id.* at 124, 796 *A.*2d 857. The search revealed drugs and more than $630 in cash. *Ibid.* This Court determined that the stop was unlawful. *Id.* at 125, 796 *A.*2d 857. We explained that

> [a]n anonymous tip, standing alone, is rarely sufficient to establish a reasonable articulable suspicion of criminal activity. The United States Supreme Court has warned that the veracity of persons supplying anonymous tips is by hypothesis largely unknown, and unknowable. That Court also has instructed that an informant's veracity, "reliability," and "basis of knowledge" are relevant in determining the value of his report. To justify action based on an anonymous tip, the police in the typical case must verify that the tip is reliable by some independent corroborative effort.
>
> Generally, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable. Stated differently, courts have found no

> constitutional violation when there has been independent corroboration by the police of significant aspects of the informer's predictions[.] The analysis in any given case turns ultimately on the totality of the circumstances.

[*Id.* at 127-28, 796 *A.*2d 857 (citations and quotations omitted).]

Applying the teachings of *J.L.* and *Rodriguez* to the present case, I conclude that the physical description received from the unknown source was not reliable because the tip did not demonstrate "that the tipster [had] knowledge of concealed criminal activity." *J.L., supra,* 529 *U.S.* at 272, 120 *S.Ct.* at 1379, 146 *L.Ed.*2d at 261. There was no indication that the tip was reliable in its assertion that the suspect illegally possessed a weapon. Moreover, the tipster's claim that defendant had a gun was never corroborated before or after defendant was apprehended. Thus, the "veracity" and the "basis of knowledge" to establish the reliability of the asserted illegality was absent. Consequently, I conclude that the police lacked a reasonable suspicion of criminal activity to justify an investigatory stop.

To be sure, upon receiving the anonymous tip the police could lawfully approach defendant and seek his permission to talk to him, thereby engaging a field inquiry. However, when police conduct a field inquiry, there is no lawful requirement that an individual acquiesce to questioning. Therefore, defendant here had a constitutional right to leave the scene. *See Maryland, supra,* 167 *N.J.* at 483, 771 *A.*2d 1220.

Previously, we explained that in some circumstances flight is not prohibited conduct. *State v. Tucker,* 136 *N.J.*

158, 169, 642 *A.*2d 401 (1994). We observed in *Tucker* that some people "may not feel entirely comfortable in the presence of some, if not all, police is regrettable but true." *Ibid.* Although flight upon encountering police is not to be encouraged, standing alone, such flight is insufficient to justify an investigatory stop. *Id.* at 170, 642 *A.*2d 401.

Moreover, contrary to the majority's position, I find no justification to impose a good faith exception. "We have recognized previously that an officer's subjective good faith cannot 'justify an infringement of a citizen's constitutionally guaranteed rights.'" *Rodriguez, supra,* 172 *N.J.* at 129, 796 *A.*2d 857 (quoting *State v. Arthur,* 149 *N.J.* 1, 8, 691 *A.*2d 808 (1997)).

I conclude that based on the totality of circumstances, the police lacked sufficient reliable information to conduct an investigatory stop, but could have conducted a field inquiry. Because defendant may lawfully depart from a field inquiry, his departure did not violate *N.J.S.A.* 2C:29-1.

For the reasons expressed, I dissent from the majority's conclusion that a person may be guilty of violating *N.J.S.A.* 2C:29-1 by exercising his or her constitutional right to depart from a field inquiry.

Justice LONG joins in this opinion.

For affirmance – Chief Justice PORITZ and Justices LaVECCHIA, ZAZZALI, ALBIN and RIVERA-SOTO-5.

For reversal – Justices LONG and WALLACE-2.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A- 4347-03T5

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SALEEM CRAWLEY,

Defendant-Appellant.

Argued: April 20, 2005 – Decided: JUN 30 2005

Before Judges Wefing, Fall and C.S. Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket Number MA-2003-045.

Fruqan Mouzan argued the cause for appellant (Gibbons, Del Deo, Dolan, Griffinger & Vecchione, attorneys; Mr. Mouzan, on the brief).

Daniel I. Bornstein, Deputy Attorney General, argued the cause for respondent (Peter C. Harvey, Attorney General, attorney; Mr. Bornstein, of counsel and on the brief).

PER CURIAM

After a trial conducted *de novo* in the Law Division on the record developed in Newark Municipal Court, defendant Saleem Crawley was convicted of the disorderly persons offense of obstruction of law or other governmental function contrary to *N.J.S.A.* 2C:29-1a. Defendant now

appeals, contending that his actions cannot constitutionally form the basis for this offense.

The incident giving rise to the charge against defendant occurred on March 15, 2002 at approximately 12:10 a.m. in Newark. Newark Police Officers Paul Williams and Matthew Milton, who were in full uniform in a marked patrol vehicle, were dispatched to the area outside the Oasis Bar at 348 South Orange Avenue to investigate a report that a man at that location was in possession of a firearm. When they received the dispatch, the officers were five to six blocks from that location, and it would have taken them "maybe a minute or two to get there." The radio dispatch described the suspect as a young black male, 5'5" to 5'7" tall, weighing one-hundred fifty pounds and wearing a green jacket, red shirt, blue jeans and black boots. The responding officers knew that the Oasis Bar was located in a high-level narcotics area where many weapons offenses occurred.

As the officers were proceeding westbound on South Orange Avenue in their patrol car, they saw defendant walking eastbound on South Orange Avenue. According to the officers, defendant matched the description contained in the radio dispatch "exactly."

Officer Williams stated that as their patrol vehicle approached the area where defendant was walking eastbound, defendant

> started to walk with his hands in his pockets of his jacket, opposite our direction eastbound on South Orange Avenue at a semi-brisk pace. He wasn't running, but he proceeded to walk away.

Officer Milton, who was driving the patrol vehicle, executed a U-turn on South Orange Avenue and approached

defendant from the rear. After making that turn, defendant turned his head and appeared to see the patrol vehicle. Officer Williams rolled down his window and stated, "Police. Stop. I need to speak with you or need to talk with you." Without saying a word, defendant "immediately turned and just started running."

Officer Williams pursued defendant on foot, and apprehended him in the courtyard of a nearby apartment complex. Defendant was frisked but no weapon was found. Officer Williams stated that during the foot chase he saw defendant drop a bag, which he retrieved and which allegedly contained a controlled dangerous substance.

Defendant was charged with possession of a controlled dangerous substance, *N.J.S.A.* 2C:35-10c; possession of drug paraphernalia, *N.J.S.A.* 2C:36-2; loitering for purposes of obtaining or selling a controlled dangerous substance, *N.J.S.A.* 2C:33-2.1; and obstructing the administration of law or other governmental function, *N.J.S.A.* 2C:29-1, all disorderly persons offenses.

The charges against defendant were tried in municipal court on March 12, 2003. However, the alleged controlled dangerous substance could not be produced by the State. The municipal court judge acquitted defendant of the drug charges, but convicted defendant of the obstruction charge. On appeal *de novo* on the record below to the Law Division, the court affirmed, issuing a written decision dated March 17, 2004, stating in pertinent part:

> I am satisfied that the facts of this case properly support a conviction under *N.J.S.A.* 2C:29-1(a). For reasons stated hereinafter, this decision does not require the Court to determine whether the police actions met the standards for

a constitutionally permissible investigatory stop. Rather, this Court holds that the police actions in this case were objectively reasonable and thus not "unlawful" under *N.J.S.A.*, 2C:29-1(a) and that the defendant had no right to risk the safety of the officers or others by embarking upon a flight.

It must be recalled that the officers were dispatched in the early morning hours to a bar "notorious" as a location for weapons offenses in a part of Newark known as a "very high narcotics area." The dispatch described an individual who allegedly possessed a weapon and the defendant's clothing, physical characteristics and location "exactly" matched the information provided in the dispatch. In *State v. Tucker*, [136 *N.J.* 158, 167 (1994),] the Supreme Court held that while flight alone does not justify police seizure of a suspect and warrants, suppression of evidence obtained thereby, it is nonetheless clear there is a " . . . need for police to engage in investigative processes to gather evidence of crime." . . .

Police clearly have an obligation to undertake investigations of suspected criminal activity and the remedy for an investigation which invades a citizen's right under the Fourth Amendment to the United States Constitution or Article I, paragraph 7 of the New Jersey Constitution is suppression. *State v. Novembrino*, 105 *N.J.* 95, 108 (1987). It does not automatically follow, however, that because the police stepped over a constitutionally imposed line in stopping a defendant, the defendant is free to ignore a police order to stop and to flee from the police presence. Police action which is reasonable under the totality of the circumstances, though mistaken from a

constitutional perspective, is not "unlawful" under *N.J.S.A.* 2C:29-1(a).

In *State v. Casimono*, 250 *N.J. Super.* 173 (App. Div. 1991), *certif. denied*, 127 *N.J.* 558 (1992), the Appellate Division held that a police officer's unconstitutional detention of the defendant did not justify defendant's actions in hindering apprehension and resisting arrest. The Appellate Division explained, "[t]here is a solid line of authority in other jurisdictions holding that an illegal detention or search ordinarily will not bar a conviction for an assault, escape or other unlawful response committed by the person subjected to the unlawful police action." *Id.* at 183.

* * *

The police in this case received a dispatch that a man possessed a weapon in a high crime area. Such a report obviously necessitates a prompt police response. The defendant matched the description of the suspect and immediately fled upon being told to "stop" by the police. Defendant's flight carried a grave risk of injury to both the police officers and others and was undertaken after defendant was unambiguously told by a uniformed officer to "stop."

The reasonableness of the police action in this case (irrespective of whether it met a constitutionally imposed standard) and the physical resistance of the defendant through flight justify and support defendant's conviction under *N.J.S.A.* 2C:29-1. As the Supreme Court stated in *State v. Lashinsky*, 81 *N.J.* 1, 11 (1979), "where an officer's instructions are obviously reasonable, in furtherance of his duties, an individual toward whom such instructions are directed has a

> correlative duty to obey them." This Court finds the testimony of the officers, giving due deference to the credibility determination made by the Court below, warrants a finding that the State has proved, beyond a reasonable doubt, defendant's guilt under *N.J.S.A.* 2C:29-1(a).
>
> This Court recognizes that there may be limited circumstances wherein police action, which violates a federal or state constitutional standard, may preclude criminal conviction for obstructing the administration of law. *See e.g., State v. Berlow,* 284 *N.J. Super,* 356 (Law Div. 1995). However, that would be a rare case and a defendant would have to show, in addition to police action violative of federal or state constitutional provisions, patently unreasonable police conduct and passive resistance by the defendant which neither causes nor threatens harm to defendant, the police or others. Such is not the case at bar.
>
> [Other citations omitted.]

The Law Division judge issued a judgment of conviction on March 17, 2004, finding defendant guilty of violating *N.J.S.A.*, 2C:29-1a. Defendant was sentenced to a one-year period of probation and applicable minimum mandatory fines were imposed. Defendant has satisfactorily completed his probationary period.

On appeal, defendant presents the following arguments for our consideration:

> *POINT I*
>
> *N.J.S.A.* 2C:29-1 IS UNCONSTITUTIONAL BECAUSE IT MAKES FLIGHT FROM POLICE OFFICERS ILLEGAL EVEN THOUGH THE

UNITED STATES SUPREME COURT HAS LONG HELD THAT AN INDIVIDUAL IS NOT REQUIRED TO STOP AND ANSWER POLICE QUESTIONS UNLESS THE OFFICER HAS REASONABLE, OBJECTIVE GROUNDS FOR THE STOP.

POINT II

THE OFFICERS LACKED REASONABLE SUSPICION THAT MR. CRAWLEY WAS ENGAGED IN CRIMINAL ACTIVITY AND THEREFORE COULD NOT GIVE CHASE ONCE MR. CRAWLEY DECIDED TO REMOVE HIMSELF FROM THE AREA.

POINT III

THE LOWER COURT'S PUBLIC POLICY RATIONALE DOES NOT JUSTIFY AFFIRMING MR. CRAWLEY'S CONVICTION.

As a preliminary matter, the State argues that defendant waived his right to challenge the propriety of the police conduct on federal or state constitutional grounds because he failed to claim, at any time prior to trial, that he was the victim of an unlawful search or seizure, contrary to the Fourth Amendment of the United States Constitution or Article I, ¶ 7 of the New Jersey Constitution. We disagree. This was not a circumstance where a defendant should be deemed to have waived any objection to the admission of evidence at trial as a result of a failure to make a timely motion to suppress evidence. *See R.* 3:5-7(f).

Here, there is no evidence at issue that could have been the subject of a motion to suppress; rather, the issue on appeal is whether defendant's flight from the police can

be constitutionally criminalized under these circumstances. However, the failure of defendant to properly raise, at trial, the constitutional issue now raised on appeal, did result in a diminished record as it provided no opportunity for the State to fully develop issues relating to the source of the information provided to the responding police officers in the radio dispatch.

The trial court record in this regard is limited and certainly not detailed. There is, for example, no information as to when the information that formed the basis for the radio dispatch was received or the identity of the police personnel receiving the call; no information as to the source of that information, whether through a 9-1-1 caller, from a confidential informant, or an anonymous tip; no information concerning the basis or context of the content of the radio dispatch; and, if it was received through a 9-1-1 or other recorded call, no audio recording of the tip was introduced into evidence. Stated differently, the arguments advanced at trial in the municipal court provided no occasion for an inquiry into those issues that have now been brought into focus on this appeal. We cannot now determine or infer what the State might have been able to produce on these questions if it had been called upon to do so had the issue been properly raised. However, we conclude that the record is adequate for our review of the issues advanced by defendant on appeal.

"The Fourth Amendment provides that 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .' This inestimable right of personal security belongs as much to citizens on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs." *Terry v. Ohio*, 391 *U.S.* 1, 8-9,

88 *S. Ct.* 1868, 1873, 20 *L. Ed.* 2d 889, 898 (1968). The threshold question governing the applicability of the protections of the Fourth Amendment and Article I, ¶ 7 of the New Jersey Constitution is whether there is a "seizure" of the defendant. "In determining whether a seizure occurred, a court must consider whether 'in view of all the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave.'" *State v. Stovall*, 170 *N.J.* 346, 355 (2002) (quoting *United States v. Mendenhall*, 446 *U.S.* 544, 554, 100 *S. Ct.* 1870, 1877, 64 *L. Ed.* 2d 497, 509 (1980)).

Here, if the stop of defendant by the police officers is categorized as a "field inquiry," then no seizure occurs, and a "search and seizure" analysis is inapplicable.

> A "field inquiry" is the least intrusive encounter [between citizens and the police], and occurs when a police officer approaches an individual and asks "if [the person] is willing to answer some questions." [*State v. Nishina*, 175 *N.J.* 502, 510 (2003)]. A field inquiry is permissible so long as the questions "[are] not harassing, overbearing, or accusatory in nature." *Ibid.* "The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way." [*State v. Maryland*, 167 *N.J.* 471, 483 (2001)] (quoting *Florida. v. Royer*, 460 *U.S.* 491, 497-98, 103 *S. Ct.* 1319, 1324, 75 *L. Ed.* 2d 229, 236 (1983)).
>
> [*State v. Pineiro*, 181 *N.J.* 13, 20 (2004) (other citations omitted).]

A citizen's encounter with the police is elevated from a field inquiry to detention, and an investigatory stop, "when an objectively reasonable person feels that his or her right to move has been restricted." *Maryland, supra*, 167 *N.J.* at 483. An investigatory stop, also referred to as a *Terry* stop, "is valid 'if it is based on specific and articulable facts which, taken together with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity.'" *Pineiro, supra*, 181 *N.J.* at 20 (quoting *Nishina, supra*, 175 *N.J.* at 510-11).

"The standard of reasonable suspicion required to uphold an investigative detention is lower than the standard of probable cause necessary to justify an arrest." *Nishina, supra*, 175 *N.J.* at 511. "When determining if the officer's actions were reasonable, consideration must be given 'to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.'" *State v. Arthur*, 149 *N.J.* 1, 8 (1997) (quoting *Terry supra*, 392 *U.S.* at 27, 88 *S. Ct.* at 1883, 20 *L. Ed.* 2d at 909). The police officer's hunches or subjective good faith cannot justify an infringement of a citizen's constitutionally-guaranteed rights. "Rather, the officer 'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.'" *Ibid.* (quoting *Terry, supra*, 392 *U.S.* at 210 88 *S. Ct.* at 1880, 20 *L. Ed.* 2d at 906).

If the officer's contact with defendant had been merely a field inquiry, then defendant would have been free to leave the area and his failure to heed the officer's request to stop and speak with the officers could not have been criminalized. However, if the police officers were in the process of conducting a valid investigatory stop, then defendant's flight from the scene would constitute a proper

basis for a violation of *N.J.S.A.* 2C:29-1a. *See* Cannel, *New Jersey Criminal Code Annotated,* comment 2 on *N.J.S.A.* 2C:29-1 (2005) (noting that prior to the 2000 amendment to this section, running from the police did not constitute a crime under this section, and that the word "flight" was added to the first sentence of this section; thus, in absence of a constitutional impediment, flight itself can sustain a conviction).

Here, there can be no question but that defendant was detained or "stopped" for investigatory purposes. This was no mere "field inquiry." The stopping officers attempted to detain defendant as part of their assigned investigatory mission catalyzed by the received radio dispatch. In making his findings after the trial, the municipal court judge concluded that defendant clearly "understood that he was being apprehended, detained or told to stop, and had no right to flee." That finding is supported by substantial, credible evidence contained in the record.

Therefore, the focus of our inquiry is whether this investigatory stop was based on specific and articulable facts which, when taken together with rational inferences from those facts, gave rise to a reasonable suspicion of criminal activity by defendant. Accordingly, we reject as irrelevant defendant's argument that N.J.S.A. 2C:29-1a is itself unconstitutional because it makes it illegal for someone to do something he has a constitutional right to do. That argument would only be pertinent if we were reviewing a field inquiry as the prelude to the charge.

Thus, the issue is whether the record on appeal contains specific and articulable facts which, when taken together with the totality of the circumstances and rational inferences from those facts, gave rise to a reasonable

suspicion of criminal activity by defendant that constitutionally justified the stop and inquiry. We conclude there were sufficient facts, and rational inferences from those facts – even with the limited record provided – that established such a reasonable suspicion, and that defendant's unwarranted flight from the stop was thereby sufficient to sustain a conviction pursuant to *N.J.S.A.* 2C:29-1a.

We are mindful of the decision of the United States Supreme Court in *Florida v. J.L.*, 529 U.S. 266, 120 *S. Ct.* 1375, 146 *L. Ed.* 2d 254 (2000). There, an anonymous caller reported to the police that a young black male was standing at a particular bus stop, wearing a plaid shirt and carrying a gun. Nothing was known about the informant, the source of his information or the location from which the call had been made. *Id.* at 268, 120 *S. Ct.* at 1377, 146 *L. Ed.* 2d at 258-59. "All the police had to go on in [that] case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L." *Id.* at 271, 120 *S. Ct.* at 1379, 146 *L.Ed.* 2d at 260-61. The Court found the information was not sufficiently reliable to justify a stop and frisk of the defendant. *Id.* at 271-72, 120 *S. Ct.* at 1379, 146 *L. Ed.* 2d at 260-61.

The specific facts and reasonable inferences from those facts in this case are significantly distinguishable from those in *J.L.* Here, as opposed to *J.L.*, the evidence established that the location of both the bar and where defendant was stopped were collectively known as a high-crime area, characterized by significant narcotic activity, where the illegal use of firearms often occurred, making the imperative to conduct an investigatory stop more compelling. Here, the description of the person allegedly

possessing the firearm was much more detailed than in *J.L.*, and defendant matched the description given "exactly." Additionally, when the defendant noticed the patrol vehicle, he placed his hands inside the pockets of his jacket, and started to walk away at a "semi-brisk pace." In J.L., the defendant was simply standing at a bus stop along with other persons and had made no unusual movements that would form the basis for suspicion. *Id.* at 268, 120 *S. Ct.* at 1377, 146 *L. Ed.* 2d at 259.

Stated differently, here, there was significantly more than an isolated anonymous tip that formed the basis for the reasonable suspicion of criminal activity that justified the investigatory stop. "[C]ourts are not to evaluate factors in isolation, but are instead to evaluate the totality of the circumstances, and to afford to officers the opportunity to 'draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person."'" *United States v. Jones,* 284 *F.* 3d 472, 475 (3d Cir.) (quoting *United States v. Arvizu,* 534 *U.S.* 266, 273, 122 *S. Ct.* 744, 750-51, 151 *L. Ed.* 2d 740, 749-50 (2002), quoting *United States v. Cortez,* 449 *U.S.* 411, 418, 101 *S. Ct.* 690, 695, 66 *L Ed. 2d* 621, 629 (1981)), *cert. denied,* 537 *U.S.* 940, 123 *S. Ct.* 50, 154 *L. Ed.* 2d 245 (2002).

Here, evaluating the conduct of the officers based on the totality of the circumstances, and affording them the opportunity to draw on their own experiences and specialized training, we are satisfied that the officers had a reasonable articulable suspicion of criminal activity by defendant that constituted more than a hunch or inchoate suspicion, justifying the investigatory stop. Therefore, the

subsequent flight by defendant constituted a proper basis for a violation of *N.J.S.A.* 2C:29-1a.

Affirmed.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

State of New Jersey,	:	Superior Court of New Jersey
	:	Law Division-Essex County
vs.	:	Docket No. MA-03-045
Saleem T. Crawley,	:	Criminal Action
Defendant.	:	
	:	

MaryAnn K. Lynch, Esq.
Special Deputy Attorney General
For the State of New Jersey

Fruqan Mouzon, Esq.
For the Defendant.

Kennedy, J.S.C.

Defendant appeals pursuant to *R.* 3:23-1 *et. seq.* from a judgment of conviction for obstructing the administration of law returned against defendant in the Municipal Court of the City of Newark. Defendant contends that his flight from police cannot form the basis for a conviction under *N.J.S.A.* 2C:29-1(a) because the officer's order to "stop" and the subsequent chase of the defendant violated his rights under the Fourth Amendment of the United States Constitution and Article I paragraph 7 of the New Jersey Constitution.

The facts in this case are largely undisputed. On March 15, 2002, at approximately 12:10 a.m., Newark Police Officers Paul Williams and Matthew Milton were dispatched to the Oasis Bar on South Orange Avenue on a report that a man there was in possession of a gun. The radio dispatch described the subject as a young black

male, 5'5" to 5'7" tall, weighing 150 lbs and wearing a green jacket, a red shirt, blue jeans and black boots.[1]

Officer Williams testified that the location of the dispatch was " . . . a very high narcotics area. A lot of weapons offenses, specifically at the Oasis Bar. It's notorious."

The officers immediately proceeded westbound on South Orange Avenue toward the Oasis Bar. As they neared the location, the officers spotted the defendant walking eastbound on South Orange Avenue. The defendant "exactly match[ed] the description" contained in the radio dispatch, according to Officer Williams, and the officers therefore made a quick U-turn on South Orange Avenue and pulled up beside the defendant.

The Officers were in full uniform and were in a marked police vehicle. Officer Williams rolled down his window and said to defendant. "Police. Stop. I need to speak with you." Defendant, without a word, "immediately turned and just started running." Officer Williams thereupon pursued defendant on foot and eventually apprehended him in the parking lot of a nearby apartment complex. Defendant was frisked, but no weapon was found.[2]

---

[1] No testimony was presented at trial as to the source or reliability of the information provided in the radio dispatch.

[2] During the chase, Officer Williams claimed he saw defendant drop a bag, which he retrieved and which allegedly contained a controlled dangerous substance ("CDS"). The defendant was arrested and changed with possession of a CDS and obstructing the administration of law. The Municipal Court acquitted the defendant on the drug charge because the alleged CDS could not be located at the time of trial.

N.J.S.A. 2C:29-1(a) provides. in pertinent part, that a person commits an offense ". . . if he purposely obstructs, impairs, or prevents the administration of law .... or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act." The statute had been amended in 2000 to include the word "flight" as a means of preventing a public servant from lawfully performing an official function and to delete language making the statute inapplicable to "flight by a person charged with a crime, refusal to submit to arrest." The latter acts are governed by *N.J.S.A.* 2C:29-2.

Defendant argues that the police had neither probable cause to arrest nor a reasonable suspicion of criminal activity based on "specific and articulable facts" sufficient to justify an investigatory stop (*see*, e.g., *State v. Rodriguez*, 172 *N.J.* 117 (2002) and *State v. Tucker*, 136 *N.J.* 158 (1994)) and that, as a consequence, the conviction cannot stand. The defendant asserts that the police acted "unlawfully" in ordering the defendant to stop and in chasing him and that, alternatively, defendant's conviction cannot be based on his exercise of a constitutional right.

The State relies on *State v. Doss*, 254 *N.J. Super.*, 122 (App.Div.) *cert. den.* 130 *N.J.* 17 (1992) for the proposition that defendant's flight in disobedience of an officer's command to "halt" for an investigatory stop constitutes a violation of *N.J.S.A.* 2C:29-1.

I am satisfied that the facts of this case properly support a conviction under *N.J.S.A.* 2C:29-1(a). For reasons stated hereinafter, this decision does not require the Court to determine whether the police actions met the

standards for a constitutionally permissible investigatory stop. Rather, this Court holds that the police actions in this case were objectively reasonable and thus not "unlawful" under *N.J.S.A.* 2C:29-1(a) and that the defendant had no right to risk the safety of the officers or others by embarking upon a flight.

It must be recalled that the officers were dispatched in the early morning hours to a bar "notorious" as a location for weapons offenses in a part of Newark known as a "very high narcotics area." The dispatch described an individual who allegedly possessed a weapon and the defendant's clothing, physical characteristics and location "exactly" matched the information provided in the dispatch. In *State v. Tucker, supra,* the Supreme Court held that while flight alone does not justify police seizure of a suspect and warrants suppression of evidence obtained thereby, it is nonetheless clear there is a " . . . need for police to engage in investigative processes to gather evidence of crime." 136 N.J. at 167. *See, State v. Sheffield,* 62 *N.J.* 441,446 *cert. den.* 414 *U.S.* 876 (1973).

Police clearly have an obligation to undertake investigations of suspected criminal activity and the remedy for an investigation which invades a citizen's right under the Fourth Amendment to the United States Constitution or Article I. paragraph 7 of the New Jersey Constitution is *suppression. State v. Novembino,* 105 *N.J.* 95, 148 (1987). It does not automatically follow, however, that because the police stepped over a constitutionally imposed line in stopping a defendant, the defendant is free to ignore a police order to stop and to flee from the police presence. Police action which is reasonable under the totality of the circumstances, though mistaken from a constitutional perspective, is not "unlawful" under *N.J.S.A,* 2C:29-1(a).

In *State v. Casimono,* 250 *N.J. Super.* 173 (App.Div. 1991) *cert. den.* 127 *N.J.* 558 (1992), the Appellate Division held that a police officer's unconstitutional detention of the defendant did not justify defendant's actions in hindering apprehension and resisting arrest. The Appellate Division explained, "[t]here is a solid line of authority in other jurisdictions holding that an illegal detention or search ordinarily will not bar a conviction for an assault, escape or other unlawful response committed by the person subjected to the unlawful police action." Id. at 183.

The Appellate Division added:

> Although the troopers violated the Fourth Amendment rights of defendant and Guerrero by subjecting them to pat down searches for weapons, defendant and Guerrero did not have a right to resist the searches or the troopers' subsequent efforts to place them under arrest. And since defendant's physical confrontation with the troopers created a high potential for causing injury to the officers, the need to protect the troopers' safety outweighed whatever marginal deterrent to police misconduct might be provided by immunizing defendant's actions from criminal liability.
>
> [250 *N.J. Super.* at 183]

Accord: *State v. Seymour,* 289 *N.J. Super* 80 (App. Div. 1996). Similar considerations apply here.

The police in this case received a dispatch that a man possessed a weapon in a high crime area. Such a report obviously necessitates a prompt police response. The defendant matched the description of the suspect and immediately fled upon being told to "stop" by the police. Defendant's flight carried a grave risk of injury to both the

police officers and others and was undertaken after defendant was unambiguously told by a uniformed police officer to "stop."

The reasonableness of the police action in this case (irrespective of whether it met a constitutionally imposed standard) and the physical resistance of the defendant through flight justify and support defendant's conviction under *N.J.S.A.* 2C:29-1. As the Supreme Court stated in *State v. Lashinsky,* 81 *N.J.* 1.11 (1979), "where an officer's instructions are obviously reasonable, in furtherance of his duties, an individual toward whom such instructions are directed has a correlative duty to obey them." This Court finds the testimony of the officers, giving due deference to the credibility determination made by the Court below, warrants a finding that the State has proved beyond a reasonable doubt, defendant's guilt under *N.J.S.A.* 20:29-1(a).

This Court recognizes that there may be limited circumstances wherein police action, which violates a federal or state constitutional standard, may preclude criminal conviction for obstructing the administration of law. *See, e.g. State v. Berlow,* 284 *N.J. Super.* 356 (Law Div. 1995). However, that would be a rare case and a defendant would have to show, in addition to police action violative of federal or state constitutional provisions, patently unreasonable police conduct and passive resistance by the defendant which neither causes nor threatens harm to defendant, the police or others. Such is not the case at bar.

STATE OF NEW JERSEY, vs. Saleem T. Crawley	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – ESSEX COUNTY MUNICIPAL APPEALS M.A. 03-045 on appeal from conviction from the City of Newark Municipal Court for violation of N.J.S.A. 2C: 29-19 (a)

JUDGMENT

The above stated appeal having been filed on _____ and set down for trial on March 17, 2004 before Judge JOHN C. KENNEDY, J.S.C., and the matter having been tried and a finding of Guilty having been rendered;

IT IS, therefore, on this 17th day of March, 2004,

ORDERED AND ADJUDGED THAT: Defendant Saleem T. Crawley is found guilty of violating N.J.S.A. 2C:29-1(a), a disorderly persons offense, and is sentenced as follows: probation for one year: safe neighborhood assessment of $75.00: a victim's of violent crimes compensation board penalty $50.00; and a $1.00 per month probation fee.

/s/ John C. Kennedy
JOHN C. KENNEDY J.S.C.

Entered by: _____
Notice sent to Municipal Court
and Municipal Court Judge on _____